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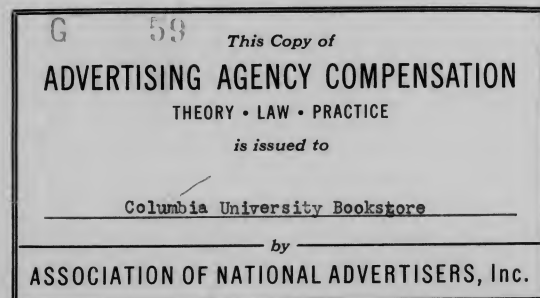
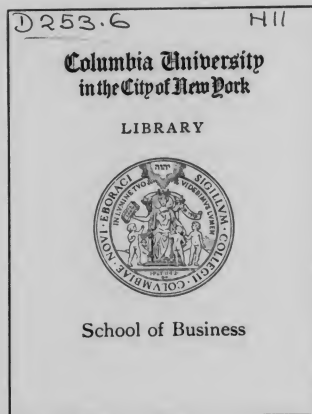


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ADVERTISING AGENCY COMPENSATION

THEORY • LAW • PRACTICE

By

ALBERT E. HAASE

in Collaboration with

LAWRENCE C. LOCKLEY

with Legal Opinion by

ISAAC W. DIGGES
(of the New York and Virginia Bars)

UNIVERSITY
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A Study Made for

LEE H. BRISTOL

Vice President, Bristol-Myers Company

ALLYN B. McINTIRE

Vice President, Pepperell Manufacturing Company

STUART PEABODY

Director of Advertising and Commercial Research, The Borden Company

As Trustees for

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ADVERTISING AGENCY COMPENSATION
IN
THEORY, LAW, AND PRACTICE

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LETTER OF TRANSMITTAL

To the Executive Committee of the Board of Directors
of the Association of National Advertisers, Inc.:

We are pleased to transmit herewith a report upon the subject of advertising agency compensation, undertaken at your request and by virtue of your authority, and completed under our supervision as your trustees.

When this undertaking was first assigned to us, we examined into the question of the need for a study of advertising agency compensation, and whether the fruits of such a study would justify its cost. The events of 1933 furnished the answer. Against a general background of advertiser dissatisfaction with the present system of compensation, two happenings occurred in that year which raised practical, immediate and specific questions that could not be ignored. One was the publication of a report entitled "Advertising Agency Compensation in Relation to the Total Cost of Advertising," written by Professor James W. Young, of the faculty of the University of Chicago. The other was the filing of a proposed code of fair competition with the National Recovery Administration which, among other things, was concerned with advertising agency compensation.

Those two happenings caused a spontaneous movement among national advertisers to obtain authoritative information as to their rights and duties, and a fund was underwritten by members of the Association of National Advertisers, and other advertisers, for that specific purpose.

By unanimous agreement, your trustees decided to retain Mr. Albert E. Haase to supervise the work, and to employ such other persons as he might think necessary or advisable.

The Trustees feel that his training and background pointed him out as the logical person to direct this study. His widespread reputation for open-mindedness, fairness, and intellectual integrity, coupled with a judicial temperament, constituted his first qualification. Of equal importance was his understanding of the interrelated problems of advertisers, agencies, and advertising mediums.

The many years which he spent with the Printers' Ink Publications gave him a well-rounded appreciation of the problems of advertisers, agents, and publishers, and particularly of the problems of publishers. His book, "The Advertising Agency," written in collaboration with Floyd Y. Keeler, revealed a sympathetic understanding of the advertising agency as a business institution. The extensive research activities which were carried on under his direction as Managing Director of the Association of the National Advertisers gave him an unusual opportunity to delve into the effectiveness of advertising. His work with the latter Association was characterized by a forthright approach to, and appreciation of, the problems of agents and advertising mediums, as well as the problems of the advertisers whom he represented.

In consultation with him it was decided that one basic consideration should underlie this study, and never be lost sight of, namely, that advertising should be regarded as a means of enabling the user of it to sell his product or service to the consumer at the lowest possible price.

The factual background of the study, it was decided, would consist of (1) the published opinions and views of interested persons on the subject of the history and theory of advertising agency compensation, including evidence of satisfaction as well as of dissatisfaction with the present method; (2) an analysis of cases decided by the Courts, from which general principles might be adduced to guide advertisers in their dealings with advertising agencies and advertising mediums; and (3) a listing of the different methods for compensating advertising agencies actually in use. (This listing was secured from a study of questionnaires received through the mails from 924 national advertisers. To substantiate the evidence disclosed by such questionnaires, advertisers were personally interviewed.)

Part I of the report lists opinions and views, gives the general legal principles involved in advertiser-agency-publisher relations, sets forth the different methods of compensation now in use, pictures what is now taking place in the agency field, and gives an analysis of the entire agency compensation problem.

Part II of the report contains the opinion of the Association's legal counsel in regard to decided cases, the essential features of which have been summarized in Chapter V of Part I. A list of the cases consulted is included.

Part III of the report contains data and documents of interest to those who wish to explore the subject in greater detail. It contains statements from the American Association of Advertising Agencies, as well as those coming from the Association of National Advertisers. It includes certain provisions of a proposed code of fair competition submitted to the National Recovery Administration by a group of agents, representative in the main of the American Association of Advertising Agencies. It also includes the statement of the Association of National Advertisers in opposition to those provisions of the code which were deemed to be regulatory of the national advertiser. The statement filed with the National Recovery Administration by the Association of National Advertisers was prepared under Mr. Haase's direction and drew upon the facts established by the study. It is argumentative in style, as contrasted with the expository treatment employed in the study.

The scope of the study and the method employed in its development, show that it was not undertaken to prove any preconceived theory. The facts which it presents virtually speak for themselves. The report makes clear for the first time that the advertiser is free, in law and morals, to determine the method and the amount of compensation of his advertising agent, in agreement with the agent. It also makes clear that this mutual right is not subject to artificial restrictions imposed by any group of advertisers, agents, or publishers, or by any combination of those groups.

We submit this report with the confident expectation that it will be of invaluable aid to advertisers, agents, and medium owners, in dispelling misconceived notions, and thus permitting of compensation arrangements between advertisers and agents which are best suited to the needs and requirements of each individual case.

The evolutionary development -- a development toward greater elasticity in compensation arrangements between advertisers and agents -- clearly indicated in this report, must not be stopped. Advertisers must see to it that it is not.

Respectfully submitted,

Lee H. Bristol, Chairman
Allyn B. McIntire
Stuart Peabody

Trustees, Agency Compensation Study

A SUMMARY IN ADVANCE

The statements which follow represent a summary of the findings made in this study.

It is widely assumed that there is a standard method of compensating advertising agents for work done for national advertisers. In order to make this summary understandable it is necessary to explain that standard method.

Under that method certain advertising mediums -- but not all -- allow an agent to buy space, service or time at a lower rate than they profess to allow an advertiser to buy it. The agent's lower rate is called the net rate. The advertiser's higher rate is called the gross rate. The difference between the net rate and the gross rate, which, accurately speaking, is a discount though often referred to as a commission or differential, is regarded as the compensation due an advertising agent. This standard method is hereafter referred to as the discount method or conventional method in this summary.

A careful sifting of evidence bearing on this conventional method of paying advertising agencies indicates, first, that the method tends to obscure the real relationships between the modern agency and advertiser, and between agency and publisher; and second, that it has built up a system which, though it has the appearance of a definite structure, is changing according to the changing needs of advertisers. Exceptions to the so-called standard method of compensation are so frequent that there can hardly be said to be a definite system. The points of fact established in this study are these:

(1) Advertising agent is agent of advertiser only. The modern advertising agent is the employee and agent of the advertiser. Both business practice and legal decisions show that the agent owes the advertiser an undivided loyalty. The legal limitations on the general relationship of agent to principal -- which apply to the present situation -- are clear:

"The agent is not entitled to avail himself of any advantage that his position may give him to profit beyond the agreed compensation for his services. He will be required to account to his employer or principal for any gift, gratuity or benefit received by him in violation of his duty, or any interest acquired adverse to his principal, without a disclosure, though it does not appear that the principal has suffered an actual loss by fraud or otherwise." (21 Ruling Case Law 826.)

(2) Advertiser pays the agency. The advertising agent is paid directly by the advertiser. It has frequently been asserted that the agent's compensation is a commission given him by the publisher. But in fact, the advertising agent receives money from his principal (the advertiser) in a fiduciary capacity -- that is to say, as a trustee -- and pays to the publisher all of the money so received except that part which represents the agent's compensation. The money flows directly from the advertiser through the agent to the medium. The advertiser pays the agent.

(3) Agents set present rate of compensation. It is often said that owners of advertising mediums determine the rate of agency compensation. This study shows that this statement is not correct. The owners of advertising mediums are not of prevailing importance in determining the rate. They have been influenced and guided in their decision by agents. It can be said that since 1918, on the testimony of agency men, agents have been a major factor in setting the rate of discount and have endeavored to make the rate they desired uniform for various classes of mediums. (The figure set by agents as the desirable uniform rate, namely 15 per cent, is one which was said to reflect costs of doing business in 1918.)

(4) Major fault of discount system is its seeming rigidity. The fault with the supposedly current method of payment for advertising agencies is its tendency toward rigidity and its outward appearance of resistance to change to meet varying needs and changing conditions. No single factor has done more to help preserve an appearance of rigidity and to create an outward show of resistance to change by the discount system than the improper use of the word "rebate" as applied to the agent and the advertiser who seek to make the matter of compensation fit the needs of the

advertiser and the ability of the agency when both consider 15 per cent to be too high.

The true meaning of the word "rebate" this study shows is this: A rebate is an arrangement between parties of adverse interest.

After considering this fact, let it be pointed out that legal research definitely fixes the modern advertising agent as the agent of the advertiser and as owing undivided loyalty to the advertiser unless the advertiser specifically contracts for some other relationship with the agent.

All of this being so, it follows that where undivided loyalty is called for there can be no adverse interest. Since there can be no adverse interest, in law, between advertiser and agent, there can be no "rebating" between them.

The term rebating is applicable in the modern advertising world only in such instances where an advertising agent has contracted to serve an advertiser and then obtains for himself secret concessions from the proprietor of an advertising medium. It does not apply to the relationship of advertiser and agent when both seek to fit payment for services to actual conditions.

(5) Discount system has been modified in actual business practice. Despite its outward appearance of rigidity and despite its outward resistance to change, the discount system has been modified. An inventory of compensation methods in actual use, which was made as part of this study, supports this assertion and explains the four basic arrangements now in use.

(6) Advertiser is free to make any terms he wishes with advertising agent. A careful weighing of the evidence leads certainly to the conclusion that the advertiser is free to employ an advertising agent under any terms and conditions that may be mutually agreeable. The agent cannot, legally or ethically, accept the obligation of serving as the advertiser's agent, if he is already bound by, or if he afterward signs an agreement with, advertising mediums or others which conflicts with his obligations to his principal -- the advertiser.

So pertinent is the testimony of Mr. Frank Braucher, Vice President of the Crowell Publishing Company (later to be quoted at greater length) in a trial concerning the income-tax classification of an advertising agency (Fuller & Smith vs. Rutzahn, 23 Fed (2nd) 959) that it deserves notice. He said:

"I regard an advertising agency as an organization built up to serve the interests of the manufacturer who advertises, advising him in matters of marketing his products through the assistance of advertising, studying markets, and making the plans, which, with the using of advertising, will make the manufacturer a greater profit on the sale of his goods or sell more goods."

It is clear, then, that the advertising agency, whatever its original function, has come to "serve the interests of the manufacturer who advertises" and may hold no other master before him.

The relationship is between advertiser and agent; they may decide the division of labor between them, and the rate and method of payment for the agency.

This freedom of contract cannot be abridged. No group of agents can lawfully dictate to other agents concerning the rate of payment they should receive from advertisers or the method by which they should receive it; nor can they prescribe a uniform course of conduct for advertising mediums with respect to agency compensation rates or methods. By the same token, no group of mediums can lawfully impose restrictions on other advertising mediums with respect to rates and methods of agency compensation, nor on any agent or group of agents concerning their rate of compensation or the manner in which they may receive it.

Any single agent or owner of an advertising medium can, with perfect safety, set down terms under which he will do business, but when he undertakes to prescribe a course of conduct for businesses other than his own, then he is confronted with the highly important question of restraint of trade. Positive proof that an advertising agent can publicly renounce the discount system and do business without let or hindrance from other agents or from advertising mediums exists in the example of N. W. Ayer & Son -- long one of the largest agencies in this country.

No advertiser, agent or medium need worry over the continued existence of the discount system as a barrier which prevents advertiser and agent from deciding among themselves the division of labor between them and the rate and method of payment for the agency. They need not worry because it is a matter of record that one of the largest agencies in the country publicly renounced the system and set its own rate of compensation and because any concerted effort to make the discount system the one and only permissible system would immediately raise the question of restraint of trade. All this being so, then there is no need for the sudden overthrow of the discount system as a cover-all system. As advertisers, agents and mediums come to know and understand their own rights and duties and act accordingly, this cover-all system will, in all probability, gradually disappear without injury to anyone.

For the good of agents as well as advertisers and mediums, agency compensation must be a matter of arrangement between advertiser and agent. Elasticity must be allowed and sanctioned. Progress for the agency business comes only from elasticity of compensation arrangement. The other direction is retrogression; for if the advertising agency could be forced to continue operation under a method of compensation that does not allow the advertiser to use it efficiently or satisfactorily, then, little by little, it is inevitable that advertisers assume the functions that the agency is prepared to perform, and the agency will gradually lose more and more ground.

But the advertising agency has much to offer advertisers; -- it has the economies of cooperative effort, it has the creative ability of the trained copy writer, it has the experience of specialization. These are advantages that the advertiser cannot well afford to lose. It becomes, then, vitally important for both agencies and advertisers to cooperate in keeping compensation methods elastic enough to allow a continuance of the close interdependence that has made the agency the important factor it is in the welfare of business.

PART I

REPORT ON STUDY

Chapter I

THE BACKGROUND OF THE ADVERTISING AGENCY COMPENSATION PROBLEM

There has been much discussion of the question of how advertising agencies are paid, and should be paid. And inevitably, such discussion brings up a technical phrase of the business -- the "agency commission system." Emphasis is always placed on the word "system," and there is always present the implication that this "system" is a structure greater than agency or advertiser, and more important than the welfare of either.

No great familiarity with the field is necessary to know that the controversy around this question of agency compensation (hinging as it has on the desire of some agents to elevate a simple business arrangement to the level of a "cause") has been prolonged and bitter. Some indication of how much of a bone of contention it has been may be found in the fact that it was the subject of a several years' investigation by the Federal Trade Commission. Another indication of the intensity of feeling on the subject was the protest on the part of advertisers and advertising agencies that met the attempt of some agencies to secure from the National Recovery Administration a code of fair competition which would give the "system" the sanction of law.

The present report on this controversial subject comes into existence because of a desire on the part of a number of national advertisers to have available on record all information obtained in a study made for them -- a study which sought to chart the rights and duties of all parties concerned with the question of agency compensation.

It was the purpose of this study to throw light on the entire problem. In order to do this, three lines of inquiry were followed. First, an analysis was made of the previous writings on the subject, in books and in publications, and of relevant statistical material. Second, a complete research into legal sources was made to secure a definite statement of the legal aspect of the situation.¹ Third, a questionnaire study² was made to discover the agency compensation practices actually in vogue.

Because no understanding of the present advertising agency compensation system is possible without a knowledge of the system's background, it will be necessary to begin with a rapid review of the development of the present method of payment. Some of the facts presented will be familiar, yet the risk of repetition must be taken in order that a complete story may be told.

In the early days of American newspapers and magazines, advertising was not a factor of importance. A large part of the population was virtually self-sufficient. Most business was entirely local in scope. But with the development of large scale production, as an outgrowth of America's industrial development, there arose a need for large scale markets, and the need of getting goods, produced in quantity, to these markets as speedily and as efficiently as possible. To perform this service, it was necessary to develop an intricate system of marketing -- a system so complicated that its costs often exceed the combined raw-material and manufacturing costs of the goods marketed. Advertising came to be used, as the result of considerable trial-and-error experimentation, to increase the efficiency and to decrease the cost of this necessarily cumbersome marketing system.

Advertising is, then, a facilitating adjunct to the selling process. For most products -- aside from those sold by mail-order or by salesmen following up direct inquiries -- it must increase the effectiveness of the selling methods employed. It must make it possible for salesmen to complete sales with fewer calls, or to sell larger orders, or to make more frequent sales. It must encourage reader buying on the part of wholesalers -- if they are used -- and retailers. It must increase the speed with which goods move from retail outlets to the hands of consumers or users. In addition, advertising should spread knowledge of new products and services, so that economies of large scale production can be reached sooner, and improvements in our standard of living come more quickly and more cheaply.

¹This research covered the compilation and digesting of more than eight hundred cases in which advertising questions, directly or indirectly, were before the Courts.

²This study, based on a mailing to 8,900 national advertisers listed in the April 1933 edition of the "Standard Advertising Register," was answered in detail by more than ten per cent of these advertisers.

However, few men who have spent enough time to master the techniques of manufacture and sales management have had sufficient time at their disposal to acquire the background necessary to enable them to become experts in the use of advertising. Just as litigation or illness requires a specialized technician, so does advertising. To many business men, advertising is a calling unto itself, not untinged with mystery. They have, therefore, felt themselves forced to look to outside help for guidance in the administration of advertising. Out of this need grew the advertising agency.

Business men, however awed they may be today by the techniques of advertising, have a very definite realization of what capacities the advertising agent should have to make advertising successful: First, the agent should have an intimate knowledge of a vast body of technical, detailed information that cannot be acquired without considerable experience and study. This information includes familiarity with the characteristics of mediums and markets; a knowledge of the technical aspects of advertising routine; and a facility in the creative aspects of copy writing, layout making, illustration, and typography. Second, he should have a close acquaintance with mass human reactions as a basis for appeals that will actually influence human behavior. Third, he should have a degree of generalship which will allow the coordination of an effective advertising program with an organized sales force and a system of distribution.

The need for this three-fold capacity was late in developing. National advertising as we know it today was not necessary until the expansion of trade that followed the post Civil War railroad development. The westward drift of population, the development of the country's railway net-work, the extension of mail facilities and the coming of the telegraph, and the growth of mechanized, large scale manufacture, with a resultant concentration of urban population: -- all these had to precede the use of advertising as an important factor in marketing merchandise. And as these various steps were taken, manufacturers made trials of publication advertising.

The early history of ventures into national advertising is too well known to need detailed review. Advertisers had no competent counsel. There was no directory or list of publications. Rates were variable, and circulation figures were announced -- when they were given out -- without any pretense at accuracy or, sometimes, honesty.¹ Unless, therefore, an advertiser wished to visit the locations in which he desired to advertise, and personally order space after bargaining with the publishers of newspapers, he was forced to rely on an outsider who presumed to have a knowledge of newspapers, rates and circulations.

It was here that the advertising agent had his beginning. And during the early days -- even into the latter part of the eighteen hundreds -- he was frankly a merchant or broker of space for newspapers. He was more of a forerunner of today's special representative, who solicits advertising for a string of newspapers, than of the general advertising agency that places business in mediums and counsels with the advertiser as to the best way of employing such mediums. These early advertising agents either sold advertising space, a service for which they collected a commission from publishers, or else bought the space outright and jobbed it out among advertisers at the highest mark-up they could secure. Competition among advertising agents was primarily on a price basis, and the agent who secured the best terms from publishers, or who was willing to work on the smallest margin, secured the business.

The early advertising agent who bought space at one price and sold it at another was in business for himself -- and himself alone. He was selling a commodity, and selling it without guarantee or recourse. When the sale was made, his responsibility was at an end. The use made of the space he sold was the worry of the advertiser.

The increasing need of service on the part of advertisers -- as their advertising needs and programs developed -- and increasing competition between agencies finally led to the offering of service by the agency. The exact time at which this change came is not known, but it can be approximately dated as beginning at around 1890. At all events, before 1890, the practice was rare, and after 1910 it was common. Competition tended both to reduce the agency's margin or discount, and to increase the volume of services it would offer to secure business.

¹Rowell, George P., "Forty Years An Advertising Agent," Franklin Publishing Co., 1926, page 165 et passim.

With this expansion in scope, the agency lost its independent status. As soon as the agency used as a business-getting factor its willingness and ability to counsel as to the best way to advertise, it allied itself, knowingly or unknowingly, with the advertiser. As a free-lance salesman of space, of course, the agent¹ had been able to sell for whom he chose, and had incurred no ethical obligation to any publisher, to any group of publishers, or to his own customers. But as a counselor of the advertiser, he became the advertiser's "servant" and assumed new responsibilities.

It is plain, from this rapid review, that the advertising system was an outgrowth of a developing economic need, and that -- in the early days at least -- the place of the agency was far from settled. Under conditions that were in a constant state of flux, change was necessary for survival. Advertising facilities were increasing; the trend toward mass marketing was forcing manufacturers to place a greater reliance on advertising -- a new and unknown business force. But let it be remembered that the growth of both publications and advertising agencies was based on the expanding needs of manufacturers. Without the additional revenue from advertising, publications would never have grown to the dominant size and scope that they enjoy today. Nor, doubtless, would the agencies.

Indeed, every increase in scope of the advertising agency came as a direct response to increasing economic needs of advertisers.

The change in allegiance on the part of the advertising agency, however, was a fact before it was generally admitted to be true. When the agency was merely a space jobber or a space broker, clearly its pay came from the publisher, and rightfully so. And because the new scope of the agency was developed little by little, and because advertisers were not at first fully convinced of the need for counsel, there was no time when agencies could easily begin to charge advertisers directly for all of the service which they rendered them. The course of least resistance, and the course least likely to disturb the income of agencies, was to continue to depend on "commissions" earned in selling space. Therefore, although the agency gradually ceased to be a salesman of space, and became the advisor and selector of mediums for the advertiser, the method by which it was paid appeared to remain the same.

In the early days of space-jobbing and space-brokerage by agencies, there had been no limits upward or downward to the "commission" or "discount" an agent might secure for the sale of space. Weaker newspapers might allow 50 per cent, whereas the "New York Times" had early reduced its "commission" to agents to 10 per cent.² By the turn of the century, however, while far from standardized, and still open to bargaining, rates had begun to settle, first, at around 10 per cent and later, at 13 per cent.³

In 1917, however, a decisive step was taken to solidify the position of the advertising agency, and to crystallize its policies and discounts. The American Association of Advertising Agencies was established. The purpose of the organization was to raise the standards of advertising, and to encourage a professional attitude toward the field by men engaged in it.⁴ Among the activities of the Association was an endeavor to secure the standardization of agency discounts by various types of mediums. Before, as was said, the discount had varied, settling to a usual 10 per cent by 1900, and later rising to a usual 13 per cent. To quote Mr. Young⁵, previously mentioned:

"In 1918 a committee of the American Association of Advertising Agencies began making representations to magazine publishers for an increase in the commission from 13 to 15 per cent, and this was eventually adopted by all the principal magazines. Another committee of the same Association then sought to bring about a standardization of the 15 per cent commission, with a 2 per cent cash discount, among publishers of all kinds,

¹There was a relatively small number of agents who worked under exclusive contracts with one or more mediums, and who, therefore, may have had definite responsibilities to these publishers.

²Rowell, George P., *Op. Cit.*, page 241, et passim.

³Young, J. W., "Advertising Agency Compensation in Relation to the Total Cost of Advertising," University of Chicago Press, 1933, page 38.

⁴Presbrey, Frank, "History and Development of Advertising," Doubleday, Doran, 1929, page 546 et passim.

⁵Young, J. W., *Op. Cit.*, page 38.

advocating a reduction of higher commissions where these existed, and an increase to this rate where, as with some metropolitan newspapers, a lower one was paid. At the present time (1933), this commission and cash discount are uniform throughout the general periodical field, with immaterial exceptions."

Corroborative evidence of the part played by advertising agents in determining the difference between net and gross rates may be drawn from the writings of Earnest Elmo Calkins, whose position in the agency field needs no explanation:¹

"The commission did not start at 15 per cent. In the beginning it was as much as the traffic would bear, sometimes as high as 50 per cent.... Finally ten per cent was tacitly agreed upon rather as a starting point for figuring than a rate to be scrupulously observed. As soon as advertising got into its stride, agents realized that ten per cent was too little, and with the cooperation of publishers it was pushed up to 15 and pegged there by publishers' contracts joined to the efforts of the agents' association in building up a code of ethics. The demand for agency service was so strong that the better houses had no difficulty in getting their price." (Underscoring ours.)

Not only is the part taken by agents in setting the rate of agency compensation publicly proclaimed by these representatives of the agency field, but it also is so admitted by at least one representative of the publishing business. The statement of H. L. Rogers, at that time business manager of "The Chicago Daily News," shows that the publishing world was aware of the agency influence.²

"It seems strange that the agents should have made so strong a claim for an increase in this 'agency commission' during the last one or two years when, as far as I can see, they get no benefit from any change which may be made in the amount of commission 'allowed' by the publishers. They are in the peculiar position of arranging their own price to the advertiser through the amount of 'commission' they charge the advertisers as an addition to the net bill from the publisher."

Published records indicate that the campaign for a standardized rate of discount did not stop with the representations made to magazine publishers in 1918 by the magazine committee of the American Association of Advertising Agencies as referred to by Mr. Young. Specific evidence to support this statement is found in "Editor & Publisher" (May 13, 1933, page 7):

"Members of the executive board of the American Association of Advertising Agencies, meeting a day in advance of the annual convention, approved a 'program for the advancement of newspaper advertising' which had been drawn up by the association's committee on newspapers.

"Much of the program has already been the basis of Four-A Policy, but attention was instantly drawn to one clause which urged promotion of the standard newspaper commission of 15 per cent, with 2 per cent cash discount if paid by the 15th or 20th of the following month." (Underscoring ours.)

This, then, is the background, quickly painted, of the agency compensation system -- a background which shows the agent gradually becoming more and more the agent of the advertiser, yet at the same time retaining a close tie with publishers, close enough, in fact, to let him, through a small group, set the publisher's rate of discount.

¹"Nation's Business," September 1932, page 25.

²"Editor & Publisher," May 21, 1921, page 7.

Chapter II

THE MODERN ADVERTISING AGENCY

A background of the history of the agency remuneration system has been painted. It is obviously now in order to describe this system as it is supposed to operate under current conditions.¹

The most concise statement of the scope and functions of the current advertising agency -- and the statement which may be taken as most authoritative -- is the list of Agency Service Standards, adopted by the American Association of Advertising Agencies at its second annual convention on October 9, 1918:

"Agency Service consists of interpreting to the public, or to that part of it which it is desired to reach, the advantages of a product or service. Interpreting to the public the advantages of a product or service is based upon:

1. A study of the product or service in order to determine the advantages and disadvantages inherent in the product itself, and in its relation to competition.

2. An analysis of the present and potential market for which the product or service is adapted:

As to location
As to extent of possible sale
As to season
As to trade and economic conditions
As to nature and amount of competition

3. A knowledge of the factors of distribution and sales and their methods of operation.

4. A knowledge of all the available media and means which can profitably be used to carry the interpretation of the product or service to consumer, wholesaler, dealer, contractor, or other factor.

This knowledge covers:

Character	(Quantity
Influence	
Circulation	(Quality
Physical Requirements	(Location
Costs	

Acting on the study, analysis and knowledge as explained in the preceding paragraphs, recommendations are made and the following procedure ensues:

5. Formulation of a definite plan.

6. Execution of this plan:

- (a) Writing, designing, illustrating of advertisements, or other appropriate forms of the message.
- (b) Contracting for the space or other means of advertising.
- (c) The proper incorporation of the message in mechanical form and forwarding it with proper instructions for the fulfillment of the contract.
- (d) Checking and verifying of insertions, display or other means used.
- (e) The auditing, billing and paying for the service, space and preparation.

¹The details presented in this chapter represent the public opinions of advertising agents. Subsequent chapters will subject this entire picture to analysis.

7. Cooperation with the sales work, to insure the greatest effect from advertising."

Not only does this declaration lay out an ambitious program -- a program which would make of the agent a "partner of the advertiser" -- but it states clearly and definitely the agent's concept of his place in business. All duties are plainly set forth as duties to the advertiser. No obligation to the publisher is set down in this outline. This clarity, however, is entirely lacking in the statement of the basis for compensation which follows the Service Standards:

"The advertising agency should retain the full amount of compensation or commission granted by publishers without direct or indirect rebating, or the supplying of materials for advertising on any basis that can be considered as direct, indirect or secret rebating.

"It shall be considered as rebating to place men in the service of the advertiser at the agency's expense, or to assume all or part of the salary of any employee of the advertiser, or to pay any fee or compensation to any one connected directly or indirectly with the advertiser, or to any third party not so connected, for obtaining or holding an account.

"The advertising agency should not take from any third party a profit, discount or commission other than the regular agency commission allowed by publishers, unless known to the client and agreed to by him."

The vagueness of this official statement, the absence of any indication of a relation between task and payment, have given occasion for a great deal of misunderstanding, even among advertising agents who presumably should know what it means.¹

There has been, naturally, a great deal of writing and speech-making by agents on agency-advertiser relations and on agency compensation. Yet an understanding of the basis of remuneration appears to be still clouded.

The facts that make the Agency Association's statement on compensation inadequate are not as well known as they should be. Only some advertising mediums, i.e., magazines, newspapers, outdoor advertising companies, broadcasting stations, and some business and industrial publications have two sets of rates.² The difference between these two sets of rates -- i.e., between the gross rate (the higher rate which the advertiser is supposed to pay) and the net rate (the lower rate at which the agent buys the same space) -- is what is described by the American Association of Advertising Agencies as "compensation or commission granted by publishers." And it is this wedge in the advertiser's dollar, a percentage that remains constant regardless of the volume of space or service purchased in a medium, and which has, since 1918, been fairly uniform at 15 per cent, that is supposed to constitute the agency's remuneration for service.³

It would appear from the Agency Association's official statement on compensation that the advertising agent's only income is derived from advertising mediums. Such an appearance is contrary to the facts. The agent has other sources of income in addition to the difference between net and gross rates in some mediums. Among the other sources of income available are:

Service Charge on Advertising in Single Rate Mediums: When an agent prepares and places advertising in a medium which has only one rate for both advertiser and

¹ Misunderstanding of the basis of advertising agency compensation among agents themselves was indicated by Clarence D. Newell, former chairman of the board of the American Association of Advertising Agencies, when in an address before that Association, October, 1926, he said it was "surprising to find (among agents) the difference of opinion and....of understanding of the basic principles that underly our method of doing business."

² Obviously, the present study is not concerned with the existence of a local or "retail" rate -- under certain conditions available to national advertisers -- as offered by newspapers, radio and outdoor owners. Local rates, which are generally lower than national rates, seldom have a gross and net quotation.

³ When a discount for cash is allowed by an advertising medium for payment within a specified period of time, that discount is deducted from the net rate; thus there is no cash discount on the difference between the gross and the net rate -- that is to say, on the agent's compensation.

agent, the agent may add to the cost of the medium a percentage of that cost for his services or he may receive a flat fee for such work.¹

Income from Art Work, Engravings, Radio Talent: For work involved in purchasing engravings, electrotypes, art work, and radio talent, an advertising agency may or may not charge an advertiser. If a charge is made it may take the form of a percentage on the amount of money expended or a flat fee agreed to by the advertiser.

With respect to engravings, in addition to payment from the advertiser the agent may retain for himself an allowance made by the engraver, which is known as a trade discount. This trade discount may be as high as 33-1/3 per cent on engravings and 50 per cent on electrotypes.

On art work and radio talent an agent may also, at times, act as a broker. That is to say he may buy the art work or talent at one price and sell it to the advertiser at a higher price.

Market Survey and Research Work: In addition to income from such sources as have just been explained, some advertising agents at times, also increase their income by selling market and product research work to advertisers. Such work may be done by an agent's own organization or by specialists or skilled help which he hires for the occasion. Such work is usually paid for by a flat fee.

Banking Income: An agent may advance, from his own pocket, money to pay an advertiser's bill for space, material, or services contracted for in that advertiser's name, and obtain a cash discount from the seller. If he retains that discount for himself, he has an income that arises from the assumption by him of a banking or money lending service.

Other Possible Sources of Income: Agents who own, directly or indirectly, businesses, which supply material and services to advertisers, such as engraving and printing plants are in a position to increase their income especially if no competition for the business of advertisers is open on accounts handled by them.

The foregoing description of income shows, in short, that while the major income of an agent on any particular account may be the difference between net and gross rates in mediums in which advertising of that account appears, he may also be drawing revenue from that same account (1) by receiving commissions or fees from the advertiser on space in mediums which have only one rate and on materials and services, (2) by becoming a broker, (3) by a profit earned as a manufacturer of materials necessary in the handling of the account, and (4) by assuming a banking function.

Information concerning agency profits, taken from published records, will supplement this bird's-eye view of the agency system. The various records and estimates available seem to indicate that the agency has been able to retain two per cent or more of the advertiser's appropriation. George H. Sheldon³ gives the following estimate:

	Percentage of Advertiser's Expenditure
"Creative and contact.	8.4
Research.	1.3
Media, rate & checking.	.8
Accounting.	.7
Mechanical Production.	1.0
Administrative.	.5
Solicitation.	.3
Net Profit.	2.0
	15.0"

¹ Frederic R. Gamble, Executive Secretary of the American Association of Advertising Agencies, according to a statement appearing in "Printers' Ink" November 3, 1932, page 61, suggested that this percentage be set at 17.64. The percentage on a one rate medium would then be equal to the usual difference of 15 per cent between the net and gross prices of a two-rate medium.

² This trade discount is offered not only to advertising agencies by engraving houses but is offered also to advertisers who buy direct from the engraver.

³ Sheldon, George H., "Advertising -- Elements and Principles," Harcourt, Brace & Co., 1925, page 85.

Figures made available by John Benson, President of the American Association of Advertising Agencies¹ are similar:

"Fifty-nine of our members have furnished profit and loss statements for 1925, showing volume of business, gross profit earned, net profit earned, and credit losses. Twenty-eight of them report classification of expense. These figures come from agents of all sizes and are very representative. They show:

"An aggregate billing of \$104,831,931.59; gross profit of \$13,313,255.27 or 14.29%; net profit of \$2,542,422.20 or 2.63%."

E. T. Gundlach² gives a higher estimate:

"The net, on a legitimate 15% service basis, has been reported as far less than 5%, but the writer assumes that either these calculations are reached after allowing considerable salary or a bonus to active stockholders or otherwise perhaps a large part of the earned commissions are spent on solicitation. Credit losses, in well conducted agencies, are negligible.

"The writer would not presume to deny the statement that many other agencies devote 12 to 12-1/2% of their 15% to service for clients. However, in the writer's own experience, the 15% may be roughly divided as follows:

"Overhead 1% to 1-1/2%; clerical service depending upon the character of the account, 1% to 10%, averaging 3-1/2% to 4%, writing and plan service 5%, net profits 5%... a client should know how his agency arrives at its net on service."

Kenneth Goode³ confirms Mr. Gundlach's estimate:

"The 15% may be roughly divided as follows:

Overhead 1% to 1-1/2%; clerical 3-1/2% to 4%; writing and plan service 5%; net profits 5%."

It seems fairly safe to accept the conclusion that advertising agencies by and large have earned a net profit of between two and five per cent of their total billing. But it must be remembered that what is called billing is not an agency's gross income. Generally speaking, 85 per cent of what is called billing is money which passes directly to the medium from the agent and on which the agent has no claim. He is a trustee and only a trustee for that money. The remaining 15 per cent is his gross income. If profits are figured on gross income, as they should be, the picture in terms of percentages as used by Mr. Benson and others is quite different.

The net profit figures of agency business, if the figures, given by Mr. Benson and the other authorities quoted, are translated into a percentage of gross income rather than a percentage of billings, range from 13 per cent to 33-1/3 per cent.

One further qualification must be added: With a business in which invested capital plays so small a part as it does in the agency business, net profits might be regarded as more or less identical with salaries to principals of the agency. To get a true picture of the profitability of the advertising agency business, it might be in order to add the salaries of the principals to the admitted net profits.

An interesting corroboration of this point appeared in an article by Norman Krichbaum, President of the Krichbaum-Liggett advertising agency of Cleveland:

¹Benson, John, "Papers of the American Association of Advertising Agencies," Ronald Press, 1927, page 37 et passim.

²Gundlach, E. T., "Facts and Fetishes in Advertising," Consolidated Book Publishers, 1931, page 106.

³Goode, Kenneth, "Manual of Modern Advertising," Greenburg, 1933, page 405.

⁴"Advertising and Selling Fortnightly," June 4, 1924, page 32.

"I have made a retrospect of my experience with agencies, and supplemented this with those reports on the elusive subject of profits which I have been able to extract from agencies with which I have never had any connection -- and in the last analysis I find the thread of this matter of salaries so hopelessly entangled in the thing that it defies all extrication....

"So long as agency salaries recognize no law, but seek their own level, just so long must any inquisition into agency profits be futile and meaningless.

"For example -- if indeed, example is needed -- if Agency A pays an executive \$7,000 per year, and lays claim to a net of 13 per cent at the end of the year, and Agency B pays an executive who earns and makes as much money for his concern \$10,000 per year, and puts its net at 3 per cent -- what have we learned about their comparative profits when we are given the figures 13 and 3?

"Another disturbing fact is that agency salaries, especially executive salaries, fluctuate violently with the complexion of business. If any agency enjoys a luscious year, this is much more likely to entail royal salary upheavals than juicy stock dividends or increments to surplus. Surplus is not a popular institution among small agencies -- perhaps deservedly not. Here is another departure from ordinary industrial or business procedure....

"All these statements converge to one point: That, if you are an agency executive, your agency 'profits' can be almost anything you like. A small agency's balance sheet at the end of the period means little. Its owner's private bank account means much more." (Underscoring ours.)

It has been shown that the statement on compensation adopted by the American Association of Advertising Agencies mentions only the differential between the amount paid by an advertiser for space (gross rate) and the amount paid by the agent (net rate) as the source of agency income, and thus, by implication suggests that this amount, usually 15 per cent, constitutes the agent's income. In the writings and speeches of agents, there is an undercurrent of confidence in "recognition" as a means of enforcing adherence to the agents' Standards of Practice, and of certifying to the competency of agencies who seek to enjoy the right to receive discounts.

In view of this attitude, it is apparent that "recognition" is of great outward importance. This being so, a detailed statement of it is in order from information made public by those who grant it.

"Recognition," sometimes called "recommendation," is granted, generally speaking, by trade associations of mediums which have two sets of prices -- one for agents and a higher one for advertisers.

Among the trade associations which are spoken of as "granting recognition to an agent" or "recommending an agent" are the Periodical Publishers Association, American Newspaper Publishers Association, Associated Business Papers, and Outdoor Advertising Association of America.

The publicly stated requirements for recognition on the part of such groups are:

Magazines: In the magazine publishing field the only association that deals with the subject of recognition is the Periodical Publishers Association. In the "Principles of Agency Recommendation" established by this association there are certain "considerations covering the recommendations of agencies to publisher members." These principles include "demonstrated ability," "financial ability," "clean competition," "unprejudiced judge of media," "cooperative in practice," and a requirement that the agency must operate in the national periodical field. In addition, there are stipulated certain "ethical practices," one of which requires that the agent must operate primarily in the agency business and another that prohibits an agent from splitting discounts with the advertiser.

The Periodical Publishers Association, according to its own statement, has only three members, that is, three publishing houses. These three organizations

are said to own and publish a total of about 11 magazines. The total number of general periodicals published in the United States, according to Ayer's Directory,¹ numbered 3,039 in 1933.

One large publishing house, the Curtis Publishing Company, which is not a member of the Periodical Association, asks an agent which it "recognizes" to sign a contract which stipulates among other things, that:

"This agency differential, in the case of each advertiser, is conditional upon our being satisfied that you have been and are rendering adequate service calculated to develop his business...."

Newspapers: There are a number of so-called recognition bodies in the newspaper publishing field, the largest being the American Newspaper Publishers Association -- an association that is national in scope. In addition there are the Southern Newspaper Publishers Association, the New England Daily Newspaper Association, the Inland Daily Press Association and other regional bodies as well as many state associations.

The report of the Committee on Advertising Agents of the American Newspaper Publishers Association submitted at the Annual Convention of that organization in 1932, reads in part as follows:

"All agencies that apply for recognition are listed, provided they are bona fide advertising agencies in good standing, meet our financial requirements and are placing a reasonable amount of advertising."

The "financial requirements" referred to in this statement, as established in 1925 at a meeting of this national newspaper association, in a resolution, provide that an advertising agent located in a city having a population in excess of 500,000 must be able to show a net worth of at least \$10,000 in order to secure recognition. In cities having a population of less than 500,000 the required amount was set at \$5,000.² (During the three years previous to that the amount of assets had been fixed at a minimum of \$5,000 regardless of the size of the city and, previous to that, the minimum requirement had been \$3,000.)

Early in 1934, the Association of National Advertisers sent requests to national, regional, and state associations of newspaper publishers for information regarding the requirements established for agency recognition. In reply the Southern Newspaper Publishers Association wrote in part:

"Our list contains the names of bona fide advertising agencies only. They are considered financially responsible and operate as independent contractors, so far as publishers are concerned."

The Inland Daily Press Association answered to the effect that it did not consider the subject of recognition within the scope of that association's work and expressed the opinion that most of the members followed the recommendations of the national association. The New England Daily Newspaper Association wrote that it had no "Holy of Holies" and that individual members followed their own choice in the matter.

In the case of the state associations, the replies showed that in almost every instance the question of recognition, other than investigation of credit, was not considered by the association but was left entirely in the hands of individual newspaper publishers.

Business Publications: Many business publications have one rate, available to advertisers and agents alike. Others grant discounts to "recognized" agents. At the annual convention of the Associated Business Papers, Inc. in 1933, the following resolution was adopted regarding agency recognition:

"That any agency desiring credit with member publications furnish the publisher and/or the credit committee of the Associated Business Papers, upon request, sufficient information of its financial condition to satisfy credit requirements."

¹ "American Newspaper Annual and Directory," 1933, N. W. Ayer & Son, Inc.

² Advertising Agent Must Show More Assets, "Printers' Ink," April 30, 1925, page 81.

"That member papers that allow commissions confine them to such advertising agencies as are independent and in a position properly to serve their clients and the publisher without bias; and which are free from ownership, either direct or indirect, by either client or publisher, and which agencies retain full commission or its equivalent when paid by the publisher, and furnish publisher, upon request, satisfactory evidence that this has been done."

Outdoor Advertising: "Recognition" of advertising agencies by group action in the outdoor medium differs from other mediums in that a court decree (the Landis decree of 1916) prohibits any combination of plant owners which would tend to impede an agency from dealing with any plant owner. In practice if an agent buys the rate and data service of the Outdoor Advertising Association of America and if the agent is financially responsible for the payment of his bills, he is enabled to place business wherever he may wish.

There is no list of "recognized agents" in outdoor advertising. The only list which is supplied is that of subscribers to the "statistical service," i.e., rate and data service.

Radio Advertising: Radio broadcasting, a comparatively new medium, as a group took no steps to establish a central recognition bureau until September 1934. In that month, the National Association of Broadcasters in convention, according to "Printers' Ink,"¹ approved establishment of an agency recognition bureau at N.A.B. headquarters in Washington. In addition to the usual requirements as to credit responsibility, character of operations, requirements will include consideration of an agency's radio service facilities."

The foregoing analysis of these public declarations on requirements for recognition show that there are four major considerations:

- 1) the agent must show proof of sound financial condition
- 2) he must prove his ability to serve the advertiser
- 3) he must operate a bona fide advertising agency
- 4) he shall not give any or all of the discounts allowed him by an advertising medium to the advertiser.

Here, then, is the picture of the advertising agency under the present compensation system as drawn from information which comes chiefly from proponents of that system. Let it be remembered that this picture has been subjected, so far, to no critical analysis. There has been no attempt to analyze, to appraise the universality or the influence of the various aspects of the system.

¹ September 27, 1934, page 93.

Chapter III
SATISFACTION AND DISSATISFACTION
WITH THE AGENCY COMPENSATION SYSTEM

The present advertising agency compensation system has been supported publicly and attacked publicly by able men. Naturally, the staunchest advocacy has come from agents (in published records) and from publishers (in conversation but not in published records), and the greatest part of the opposition has come from advertisers. Yet some of the most sincere and most telling objections to the system have come from men prominent in agency and publication fields.

From among the many public statements for and against the present system, consider the following few from representative spokesmen:¹

Strong advocacy of the system is to be found, for example, in an address² by Clarence D. Newell, president of the Newell-Emmett advertising agency and former chairman of the board of the American Association of Advertising Agencies.

"From the publisher's standpoint," said Mr. Newell, "the present basis would seem to be perfectly logical. The service rendered by agent to publisher is in sales, credit, and book-keeping. He does not render this service in any exact measure to any individual publisher, but he does render it in an exact measure to all publishers collectively and to each publisher individually in exact relation to his billings from that publisher."

"The agent is valuable to the individual publisher in exact ratio to the size of the market in dollars and cents that he creates for that publisher."

"For the publisher, therefore, a percentage of billings is the only logical way to compute the agent's remuneration...."

"If the agent is worthy of a remuneration from the advertiser, it is primarily because he has lessened for him the hazard of advertising. The measure by which he has lessened this hazard is in relation to the advertiser's increased success in the profitable sale of merchandise. This success is usually accompanied by a sustained or increased expenditure for the medium of communication offered by the publisher."

"The best proof and the only measure, therefore, of the value of the agent's service to the advertiser is the value of the amount of that medium which the advertiser feels justified in buying."

"To the advertiser, then, as well as to the publisher, basing the agent's remuneration on a percentage of the advertiser's appropriation is logical and, as a basic method, should be retained." (Underscoring ours.)

On many occasions the present system has been warmly defended by John Benson, already mentioned as president of the American Association of Advertising Agencies. From among many statements which he has made on this subject the following, taken from an address before a predecessor organization³ of the present Advertising Federation of America, is offered as being representative of his views:

"What more perfectly adjustable system could be devised for the economic progress of advertising? The great bulk of advertisers and publishers are for it. In spite of the abuses

¹ All statements made in this chapter are statements which were a matter of published record before this study was started. Chapter VI gives evidence of current satisfaction and dissatisfaction.

² Address made before meeting of American Association of Advertising Agencies at Washington, D. C., October 27, 1926.

³ This statement would seem to assume that every advertiser is successful in his use of advertising.

⁴ From an address before the Associated Advertising Clubs of the World in June 1923.

to which every human institution is heir, that system will never be abandoned until advertising no longer needs development and becomes so standardized in method that all advertisers can conduct campaigns by themselves."

Paul Block, widely known for many years in the publishing world, in a communication which appeared in "Editor & Publisher" of July 16, 1921, page 7, expressed his satisfaction with the system, after declaring he was once doubtful concerning its value, in these words:

"... the necessity of granting commissions to advertising agents is one of the important procedures towards advertising development and success... (with the abolishment of the commission system) not only would the advertiser receive less experienced and less successful advice, but so far as the publisher is concerned I fear he will have a much weakened channel for the development of new advertisers as well as for a greater development of some of the smaller advertisers of the present day."

Possibly the most incisive statement in opposition to the present system is that made by Alfred P. Sloan, Jr., president of General Motors Corporation, in a letter which appeared in June 30, 1932 issue of "Printers' Ink," page 33:

"I feel... and have felt ever since I have been connected with advertising problems, that the relationship established by the publishers with respect to the advertising agency is unsound, uneconomic, and unfair. If the present circumstances which are bringing us so many adjustments, both desirable and undesirable, result in a greater recognition of the inequities of the agency phase of the question, some progress will have been made."

In another letter, to "Printers' Ink," dated July 28, 1932, page 6, which supplemented his first statement, Mr. Sloan wrote:

"I am not against advertising agencies per se. I think they perform a necessary and valuable service to merchandisers. My quarrel with the set-up lies in the fact that 15 per cent applied to large accounts is unfair to the large advertiser; it promotes inefficiency through the establishment of service to justify the commission and, in some cases, duplication of services already performed by the advertiser personally."

"In the case of advertisers having smaller appropriations, 15 per cent is not sufficient to return the cost plus a profit to which the agency is entitled."

"I feel very strongly, and have felt for many years past, that the size of the advertising account, the service necessary and other conditions, are a necessary consideration in determining the compensation to which the agency is entitled."

Mr. Sloan is but one of the many large advertisers who have publicly voiced their dissatisfaction with the so-called standard method of agency payment. Another was the late Dr. J. T. Dorrance, of the Campbell Soup Company. He is quoted in the May 21, 1921 issue of "Editor & Publisher," page 7, as saying:

"It has been in the past and is at present our firm belief that the advertising agency should represent the advertiser and should be compensated by the advertiser. It is my belief that the advertiser can then demand and obtain real service from the agency. By this method there would be less merchandising errors committed."

Advertisers whose appropriations are small in comparison with the appropriations of General Motors and Campbell's Soups have not been silent concerning their dissatisfaction with the system.

The president of a company which uses advertising on a comparatively small

scale, namely W. W. Galbreath¹ of the Youngstown Pressed Steel Company, stated a view which other comparatively small advertisers have often put forth when he said:

"I am fundamentally opposed to paying any man who spends money for me on a basis where he receives nothing but a percentage of what he spends. I had much rather pay him on a basis of a percentage of what he could save. We want the agency's advice on all advertising and sales problems. We want the benefit of the counsel and advice of a group of trained men. We want the benefit of a long-distance view of our business. Our own direct employees are frequently too close to their problems to get the benefit of a proper perspective. We want an agency which is equally interested in every type of advertising and sales promotion work, including direct mail, trade publications, national magazines, window displays, bill boards, etc. We do not want them to feel that they will get a greater or less amount if the money is expended through one channel rather than another. I should never expect to get the kind of service which we demand if we paid nothing but the standard rates allowed by the publications."

Public evidence of the fact that satisfaction with the agency compensation system is not unanimous among publishers was strongly revealed in 1921 due to the fact that "Editor & Publisher" at that time opened its columns to a discussion of the system. Frank T. Carroll, advertising manager of the "Indianapolis News," for example, is quoted on page 9 in the July 2, 1921 issue of that publication as saying:

"You are probably familiar with my ideas on this subject, since I advocated a net rate for newspapers years ago. I can see the disadvantages of the present system; and while I have never been on the agency's side of advertising I cannot see where a well equipped agency that is absolutely rendering service could be injured by charging clients on a fee basis instead of letting the present commission take care of charges."

In the May 21, 1921 issue, page 7, of that same publication, A. W. Fell, general manager of the Worcester (Mass.) "Telegram-Gazette" wrote:

"In my opinion there is no legitimate reason why newspapers should allow commission to advertising agencies. The agent performs no service whatever for the newspaper. His work and service is exclusively for the advertiser."

More startling, however, is the statement of Robert Cade Wilson, at present a member of the board of directors of "McCall's Magazine," which he made as President of the Periodical Publishers Association, in "Editor & Publisher," August 6, 1921, page 12:

"To the many advertising agents who have genuine service to offer it would seem that they would be in a sounder position if they confined their service to the advertiser -- their real customer. If this became the consensus of opinion among agents, advertisers, and publishers, it would then be a simple matter for the publishers to establish a net rate to everybody. Whether the present rates could be lowered to the full amount of the present agency commission is questionable."

It has been indicated that there are agents who have publicly questioned or opposed the present system. Who are they? What do they say? From many the following are set forth as representative of the opinions of able and widely accepted agency men:

Earnest Elmo Calkins, for example, in an article in the September, 1932 issue of "Nation's Business," page 25, admits the inadequacy of the discount system of payment to meet conditions as they are developing:

"There will be no advertising agencies. Not if the agents see the great field of gainful endeavor that spreads before them,

and use that vast machinery they have set up, and alter and revise and modify it to meet new and changing conditions.

"Hitherto, as far as the agents were concerned, the industrial world has been divided into two parts, advertisers present or potential and the remainder of business beyond the scope of agency service because advertising could not be a major influence. In the future the various services outside straight advertising which have hitherto been employed only for clients who were also advertisers can be made available for the whole fabric of industry....

"The future of advertising agencies can hardly be discussed without a glance at least at the method of remuneration. The commission system has been under fire from the beginning. It is being subjected to a greater strain than ever. In spite of faults and certain inconsistencies it is still the best method as long as the agent's product consists wholly of advertising. But when advertising is only one department of a much broader service, some new basis seems inevitable."

In "Facts and Fetishes in Advertising,"¹ E. T. Gundlach, writes:

"The fee system, rightly used, is the one best antidote for the solicitor-counselor virus and the only method by which those agencies whose staffs include competent counselors, may aid in developing moderate advertisers to larger proportions instead of letting them grow like Topsy.... The fee system, furthermore, removes the feeling of obligation which influences many advertisers after an account has grown to large proportions. While loyalty in business is a splendid quality, it seems rather unreasonable that a client, having received some profit-making suggestions from an agency in the course of the performance of its duties, should therefore be condemned to a life sentence."

Writing in "Printed Salesmanship," August, 1931, page 527, Charles Austin Bates, long an advertising agent, says:

"For a long time I have contended that advertising agency service should be rendered on a professional basis and paid for in fees from the advertisers rather than by commission from the publisher. The standard 15 per cent commission is too little in many cases and too much in others."

The strongest evidence of dissatisfaction on the part of an advertising agency with the discount system is the policy of N. W. Ayer & Son -- for many years one of the leading agencies. Finding the system unsound as applied to agents who sought to be agents of the advertiser, N. W. Ayer & Son, over forty years ago, abandoned it entirely, setting up its own basis of payment on a principle at variance with the discount theory. (A full statement of the N. W. Ayer attitude will be found in a letter by the late F. Wayland Ayer, quoted on page 143.)

An interesting analysis from an impartial critic, Professor Melvin T. Copeland -- who is widely regarded as a leading teacher of marketing, and whose integrity and ability are universally recognized -- presents a convincing aspect of the controversy:²

"The advertising agents still receive remuneration for their services in the form of commissions from publishers based on the amount of space that agents buy for their clients. The method of paying advertising agents for their services is illogical, because their services are primarily to the advertisers rather than to the publishers from whom they receive their compensation. While the advertising agents' services are of benefit to the publishers in safeguarding proper utilization of the space that is sold, that protection is now incidental. Although there are numerous firms of advertising agents of high reputation, it is almost

Address before agency group of the National Industrial Advertisers Association on June 14, 1927.

¹Consolidated Book Publishers, 1931, page 122.

²Copeland, M. T., "Principles of Merchandising," A. W. Shaw, 1924, page 286.

inevitable that the present method of compensation should tend to give some bias to the agents, particularly in encouraging clients to spend larger sums in mediums of national circulation than would result if the agents received fees from their clients, such as are paid to engineers, lawyers, and other professional men for their services. The commission paid to an advertising agent ordinarily is 15% of the cost of the space purchased by his client. In addition to the commissions received from publishers, an agent levies special service charges on his clients for such services as preparing signs and window displays, or for conducting market surveys. The practice of charging fees for special purposes ultimately may prove to be the opening wedge for a gradual change in the method by which advertising agents are paid for all the services rendered to their clients. A sound method of compensation will encourage even better merchandising service by the advertising agents."

A broader canvas for the picture of satisfaction and dissatisfaction with the present system of agency remuneration is offered in a survey made in 1932, by Percival White, Inc., now the Market Research Corporation of America. From a questionnaire to "large advertisers" Mr. White received 149 replies, or a return of about 43 per cent, distributed as follows:

"Those favoring the fee system.	47 . . .	31.5%
Those favoring the commission system.	35 . . .	23.5%
Those who have given strong views against the commission system, but who are willing to submit to it until something better is found.	24 . . .	16.1%
Those who were non-committal.	43 . . .	28.9%

In other words, among these large advertisers, of the 106 who had developed opinions concerning the basis for compensating advertising agencies, 71, or 67 per cent, were opposed to the present method.

Even more surprising is the tabulation of replies from publishers. Inquiries were sent to 49 consumer magazines, 7 trade magazines, and 23 newspapers -- all leaders in advertising lineage. Twenty-nine replies were received, distributed as follows:

"Those favoring the commission system	10 . . .	35%
Those favoring the fee system	7 . . .	24%
Those who have given strong views against the commission system, but who are willing to submit to it until something better is found.	5 . . .	17%
Those who were non-committal.	7 . . .	24%

As before, of the 22 who had given thought to the question, a majority, or approximately 55 per cent, were opposed to the present system.

It is needless to introduce more evidence to establish the point that among all groups influenced or affected by methods of paying advertising agencies, there is cogent and sincere objection to the present compensation system.

More important than establishing the fact that there is a conflict of opinion on the agency compensation system is the task of resolving the many words, spoken or written, on either side into fundamental statements for and against the system.

The conflict over the agency remuneration system can be summarized by showing the advantages and disadvantages of the system from the points of view of the advertiser, the agency, and the medium. This can be done from existing statements on satisfaction and dissatisfaction of which those statements quoted in the preceding pages are but a small part.

The dissatisfaction of advertisers with the conventional system of agency remuneration can be resolved into one fundamental objection:

The present system of compensation forces a divergence of interest between advertiser and agent.

This statement means that advertisers who object to the system believe that a fixed percentage on volume puts the agent in a position which tempts him first to

over-spend, and second to over-spend in mediums which operate under a two-rate plan, thus neglecting mediums which do not or cannot have a two-rate system of selling. It also means that they believe the agent, by being tempted to over-spend, may give undue importance to advertising in the entire marketing plan.

Advertising mediums, as has been shown in the preceding pages, are divided in opinion on the value to themselves of the present agency compensation system. Those in favor -- usually owners of high rate mediums -- hold the opinion that the advertising agent creates volume for them and lessens their credit risks. In other words, the agent reduces their sales expense.

The other point of view in the medium field, coming usually from those with low rate mediums, holds that the agent does not increase volume but, being biased in favor of high rate mediums, represents an added and unnecessary selling expense. Owners of mediums, who find it impossible to maintain two sets of rates, say that the two-rate system militates against the use of their medium when conditions suggest such use.

Advertising agents, like publishers, are not unanimous in their declarations concerning the conventional method of payment for their services.

The arguments of agents who publicly advocate this conventional system resolve themselves into this:

Without this system it would have been impossible to cause advertisers to pay an adequate sum for expert counsel. This system offered a sufficient reward incentive to attract able men into the agency business. These able men built that business and at the same time contributed much to the upbuilding of advertising mediums by making volume possible for those mediums. All this, it is argued, has been done without injury to the individual advertiser, despite the fact that an identical minimum rate of percentage is called for in the case of each advertiser because intensity and scope of service can be varied to fit each situation under this system.

Those agents who have been opposed to the system agree with the views of advertisers and those publishers who are against the standard method. Such agents state that they can only serve the best interests of their clients -- advertisers -- by being paid by some more elastic arrangement which permits agents to care for changing needs of advertisers.

Chapter IV

CLEARING UP FUNDAMENTALS

Three generally held misconceptions, which tend to confuse thinking on the question of agency compensation, must be cleared up before any analysis of the system can be undertaken: First, that agencies are paid by publishers and proprietors of other mediums; second, that their remuneration is accurately designated as a "commission" or "differential"; and third, that all agents work in accordance with the standards of agency practice prescribed by the American Association of Advertising Agencies.¹

First, although the view that agencies are paid by publishers is widely accepted, it is almost self-evident that the payment comes from, and is made by, the advertiser himself. Although the agent's compensation is at a rate presumably set by agencies and publishers, the actual payment is made with funds that never reach the publisher. When the agency's percentage of income is 15 per cent of the gross publication rate, for every dollar of gross rate, the publisher bills the agency for 85 cents and the agency bills the advertiser for one dollar. The advertiser then pays the agency the dollar, out of which the agency remits 85 cents to the publisher. It is self-evident, therefore, that the agency receives its compensation from the advertiser.

Second, since the agency is paid directly by the advertiser it is not accurate to term the compensation it receives as a "commission." A commission arrangement is one which a seller makes with his agent or employee. In this case the agent is the employee of the advertiser -- the buyer -- and not the employee of the advertising medium -- the seller. (A special representative engaged by, say, a newspaper to sell space for that paper in competition with other newspapers, on a percentage basis, could be accurately described as receiving "commissions.")

What is the proper term, then, for the compensation an agent receives? To get the answer, look at certain elementary facts again: A publication decides to have two rates -- a net or lower rate for an advertising agent and a gross or higher rate for an advertiser who buys directly. The difference between these two rates is a discount. A discount is accurately described as an allowance made by a seller to anyone he chooses to give it to for any reason that appeals to him. The agent's compensation, so often called a "commission," is, therefore, properly described as a "discount."

The term "differential," which is occasionally used to describe his income, is also inaccurate. It would be accurate only as describing different rates of discounts set for the purpose of equalizing competition between agents who varied in ability or facilities.

An indication that the business end of the publishing field has found time to give thought to the proper label for an agent's compensation is shown in the following statement credited to H. L. Rogers, previously referred to as former business manager of the "Chicago Daily News," in "Editor & Publisher":

"I believe all men entering the publishing business are surprised when they first come in contact with the publication paying agency commission, as the practice seems to be contrary to good business ethics. It occurs to me that this question arises primarily from the fact that we call the allowance a commission rather than a discount."

Even more conclusive evidence of the nature of the agent's compensation is offered by an unsigned article in "Printers' Ink" at the time the agency discount rose to 15 per cent.² The article indicated the relation between an increase in line rates in several publications, and the increase in the discount to agencies. Both increasing costs and the increase in the agency discount were cited as the basis of the increase in space rates:

¹ See page 13 for a statement of Standards of Agency Practice.

² May 21, 1921, page 7.

³ "Printers' Ink," September 19, 1918, page 77.

"On the sixth of August, last, two national magazines announced to advertising agents and advertisers that they had decided to raise their commissions to advertising agents to 15 per cent, with a cash discount of 2 per cent, both on the gross. They gave as their reason the present high cost of service rendered by agents to clients.

"Since that time, within the past six weeks between forty and forty-five other publications have followed suit.

"Three of the larger publishers have not yet put the new commission rates into effect, but it is said on good authority that it is only a matter of time before they will, although it is said that the difference between the old thirteen and three and the new basis of commission will mean half a million dollars a year to one of them.

"While in some cases the new rates of commission have gone into effect, it is understood that the agents prefer to have this deferred until after the first of the year.

"The new rates of commission are virtually another step toward the standardization of the system of compensating agents for their services, it was pointed out by a man who was largely instrumental in putting into effect the thirteen, with three on the net for cash, commission plan. Under the new order, he remarked, for the words 'gross' and 'net' in the original plan, 'card rates' are now substituted.

"It is well known that the overhead costs of the agencies have been increasing heavily of recent years, so that they have to look for volume of business placed to make up for the low net profits derived under the commission rates in effect. Despite an increase of \$1,000,000 in volume of business placed last year, it is said, one of the large agencies only netted 3 per cent profit, while another, whose business increased by half a million dollars, netted something less than 3 per cent.

"A certain prominent agency man is reported to have remarked recently that unless the agents were allowed some better compensation for services, the agency business would not prove attractive to the type of men who have done so much to develop advertising to its present state of efficiency.

"The 15 per cent service charge has become a standard in billing clients for other phases of agency service, as for printing, art, plates, etc.

"The standard basis for fixing a general magazine's rate per line as one-half cent per thousand of circulation, has of late been increased to six-tenths of a cent by some publishers in order partially to help the publishers to meet increased costs, where in some particulars costs have doubled. With the publications getting a 20 per cent advance in their rates, and the average manufacturer meeting increased costs by increased prices, it is only logical that the agent should be better compensated for his services, one publisher pointed out."
(Underscoring ours.)

It would seem, then, that the agency's payment was, even in 1918, no longer regarded by publishers as a measure of the service rendered to them by advertising agencies, but that the rate was set as a convenience to agencies. The relationship between agency discounts and advertising rates is indicated. The remuneration of the agent was not a payment from the publisher, or for services rendered to the publisher, but was a peculiar billing device under which the agent's rate of payment was determined by agents according to their current (1918) costs of doing business.

It is impossible, then, to regard the agent's payment as anything but a discount. Turn now to the third fundamental with which this chapter deals:

Third, though the impression is given by many agencies that there is a

substantial degree of conformity to the Standards of Agency Practice adopted by the agents' association, interviews with important agents indicate that there is a considerable breaking down in actual practice -- a breaking down often brought about by the agents themselves in meeting competition. Quite clearly, there must be many secret arrangements not admitted by either advertiser or agent -- because of the coating of "morals" that has been given to conformity to the orthodox standards. Either fear of losing favorable arrangements, or the fear of being regarded as "unethical" keeps many pairs of agents and advertisers -- who have sincerely sought to work out a basis of compensation that would be mutually satisfactory -- from allowing any publicity for the bases of compensation that they use.

A subsequent chapter¹ will present reports from advertisers. Interviews have elicited a sufficient number of variant methods to make possible a tabulation of non-orthodox types of agencies. They are:

(1) Facility and Name Renting Agency. This type of agency rents the right to operate under its name and to use its facilities to individuals who control accounts. In the language of the trade, such accounts are described as "vest-pocket accounts." Such agencies render a complete or partial service to such accounts depending upon price arrangements made with the owner of the vest-pocket account. The owner of vest-pocket accounts usually becomes an official part of such an agency, and generally bears the title of vice-president.

Sufficient business under the control of the owner of the agency which is handled in the orthodox manner will often give an outward show that puts such an agency in the "ethical class."

Agencies falling in this classification are not easily identified from outward appearance or from financial statements.

Financial records of such agencies might not show that they are, in whole, or in part, merely renters of facilities to owners of vest-pocket accounts.

Those records might not go beyond showing "salaries." The division of that "salary" which the "vest-pocket" makes with the advertiser might nowhere be a matter of record in the agency.

(2) Specified Service Agencies. Agencies in this classification are willing to undertake work for advertisers according to the needs and desires of the advertiser as determined by advertisers. Such agencies, for example, for one advertiser may do nothing more than place the advertising in the mediums selected by that advertiser. On the other hand, for another client they may perform a considerable number of functions. For specified work they may receive as their income a certain proportion of the discount allowed by mediums, or they may credit the discount to the advertiser and receive a flat fee bearing no relation to the amount of business which is placed. For work which requires the use of a number of different functions of the agency they may receive more than the discount allowed by mediums on space used.

(3) Non-Placing Agencies. This type of agency is, usually, a one to three man organization not primarily interested in placing advertising in discount mediums in its own name, but ready and willing to place it through other agencies, such as are found in Class 2 when the occasion demands. The service which it offers for sale to the advertiser is personal counsel and advice on advertising and sales problems. Compensation is usually a matter settled by advertiser and agent.

(4) House Agency. A house advertising agency is the usual name for an agency owned by an advertiser, either in the name of the corporation that uses advertising or in the names of individuals who are officers and/or owners of the corporation. Such an agency may follow all "ethical" practices with respect to agency compensation. Those that work on that basis, of course, turn back their profit or a part of it to the actual owners. Others are said to operate solely on a basis of cost of doing business. The house agency, in other words, may be as varied in compensation policies as it chooses to be.

With these three general misconceptions clarified, it is possible to turn to an analysis which will show just what the rights and obligations of both agent and advertiser are.

¹ See Chapter VI, page 34.

Chapter V

LEGAL ASPECTS OF AGENCY PRACTICE

The history of agency compensation and the theory of it as its exponents propound it plainly indicate that there has been a desire on the part of some agents and publishers to make the system rigid and unyielding insofar as it specifies the method by which an agent receives his minimum compensation. In later years the history and expounded theory show determined effort to make the minimum rate received under that method fixed and unchangeable. No indication exists of any desire to set maximum rates.

All of this has been happening while the agent's position, judging from his actual day to day work, has been shifting until he has become in fact the agent of the advertiser.

The first question raised in any consideration of a rigid method of payment or a minimum rate of payment to advertising agents is this: What is the legal status of the modern advertising agent?

Only from the answer to this question can the rights and duties of all who concern themselves with the question of agency compensation -- advertiser -- agent -- and medium -- be charted so that each may know how to proceed for the good of all.

What do the courts say?

An answer is given in this chapter which is only a summary. The complete legal study itself will be found later in this report, beginning on page 71.

There are not a great many decisions bearing directly upon the legal status of the advertising agency. Such decisions as do exist, together with a larger number in which advertising practices are dealt with collaterally, permit the formulation of (1) a reasonably exact conclusion as to the allegiance of the agency, and (2) a statement of its responsibilities to its clients as well as to the owners of mediums which carry its clients' advertising messages.

The gradual shift of the agency's loyalty from the publisher's cause to that of the advertiser has been commented on previously in this report. An early indication of this changing status, as reflected in litigation, was the attempt of the Newspaper Union in 1877 to force an advertising agent to maintain a list price for advertising space which the agent had bought under a space contract.¹ This practice, on the part of agents, of purchasing space in bulk, later to be sold at a rate set independently of the publisher's wishes, persisted well into this century. In 1902, in the case of *Hampton vs. Schlesinger*,² the Court found that the agency was buying space for its own account under contract for subsequent resale to advertisers. Even as late as 1922, the *Morse International Agency*, in a suit for reclassification of taxes,³ adduced evidence to the effect that it bought space outright and allocated it to its clients as they needed it. Though it appears to be common knowledge that the advertising agency no longer acts as a jobber of white space, and although there is no indication in reported cases of subsequent litigation revealing evidence of this practice, it would be hardly safe to say that the practice has disappeared completely.

The development of the agency as an organization to render a professional service has been slow. Decided cases do not completely reveal the gradual evolution. In the early cases, the "agent," as has been indicated, was merely a space broker or a space jobber. Scattering decisions show an occasional agent beginning to trade in services as well as in space. But not until the modern agency was definitely established is there a full legal description of the functions of such an agency. In the case of *Kastor vs. Elders*⁴ (1913) the Court described the operation of the advertising agency in suit as follows:

¹ *Clegg vs. Newspaper Union*, 25 N. Y. S. 566.

² 50 N. Y. Misc. 539.

³ *People ex rel. Morse International Agency vs. Cantor*.

⁴ 156 S. W. 737.

"The evidence shows that in the growth and development of the advertising business to its present large proportions, there has come to be what may be termed a middleman or go-between, known as an advertising agent or agency. This man or agency deals with the advertiser on one hand, advising and assisting him in the selection of the publications to be used, having put in type and preparing advertising matter or copy; making or having made drawings, electrotypes, stereotypes, preparing letters, circulars, pamphlets and literature generally for circulation through the mails and otherwise; and generally conducting what is known as an advertising campaign, -- while on the other hand, deals with the publications used, placing all orders for advertisements, and adjusting all charges and settlements with them, and paying all amounts due them. In fact, in such cases the publication deals with the agent only. The agent orders the space, the sale is charged to him by the publication at the card rate, less the agency commission or the agency rate, and he pays therefor, and the advertiser has no dealings with the publisher whatever. In such cases, however, the charge to the agent for the space used is lower than the card rate, by from 5 to 15 per cent, each publication fixing its own rate or charge. This is what is variously designated on the testimony as the 'agency rate', the 'lowest rate', the 'rate with commission deducted', etc. It is given uniformly to all agencies or agents recognized by the publications as trustworthy, and to whom the publishers are willing to extend credit. It is allowed by a publication with the expectation (and it is required by a few publishers) that the agent or agency retain his or her commissions, the difference between the card rate and the rate charged the agent. It appears that the agent sometimes gives his advertising patrons the benefit of part of the agent's commission, but that is a matter of contract in each instance, and is determined by the nature of the account, the kind and extent of service required of the agent, competition, etc."

The agent, in the language just quoted, is no longer the independent space jobber or space broker, but the business advisor and agent of the advertiser.

Not only has the modern agency become the counselor of the advertiser, but, according to the more recent decisions, he has come to be recognized legally as the agent of the advertiser. A leading case in describing a typical method of conducting a modern advertising agency is that of *Fuller & Smith vs. Routzahn*, (1927) a Federal Income Tax appeal.¹ The court held that the advertising agency did not use its capital as a material income producing factor, that it did not contract for advertising space for its own account. To quote:

"If in point of fact the plaintiff (the agent) so conducted his business so that it did not need or use capital, the fact that it was theoretically liable becomes immaterial. It is further said that the plaintiff's capital gave it financial standing and entitled it to a commercial rating. Clients sought plaintiff's services because of professional standing." (Underscoring ours.)

Other cases which could be cited would merely reinforce the conclusion that the present-day advertising agent who has gone to court is a professional man, in the sense that he counsels others as to the conduct of their business. Clients seek him out "because of professional standing," or for "expert advertising service and marketing counsel." Just as it is true with other professional men, the service rendered his clients "varies according to the requirements of the particular case and the particular media selected." The agency is not a "mercantile corporation."

The "client" referred to in the various cases of record is always the advertiser. None of the cases involving the modern agency refers to the publisher as enjoying that role. The professional and personal service is rendered to the advertiser. The advertising space is purchased on behalf of the advertiser and at his specific order; the control of all services incidental to the use of this space has passed into the hands of the advertiser.

¹ 23 Fed. (2nd) 959.

If it be true that the advertising agency, as its business is conducted today, renders a professional and personal service, the next question is to determine the identity of the person served. In the early cases, the "agent" served and represented himself. He was an independent merchant dealing in advertising space. But in the *Kastor* case, cited earlier, the Court termed advertisers the "patrons" of the agency, and clearly defined the duties of the agency to its patrons. Later cases, as in *Dolman vs. U. S. Rubber*¹ (1906) which included among the duties of the agency the obtaining of "the most efficient and economical space," indicate beyond doubt that the agency is charged with the performing of a merchandising and marketing function for the advertiser.

Even more revealing is the fact that it has been the client that the agency has sued in litigation concerning compensation. In the case of *N. W. Ayer vs. U. S. Rubber Company*² (1925) the agency was clearly acting as the agent of the advertiser, and sued the latter for its compensation. It is significant that it did not sue the publisher. Two other cases, *Huber Hoge vs. Smith & Wesson*³ (1929), and *Dorrance Sullivan vs. Bright Star Battery*⁴ (1928) show the agency suing for compensation, and suing the client rather than the publisher. There appears to be no case involving modern agency practice where the agency has sued the publisher for compensation. Apparently it looks only to the advertiser for recompense for the value of its services.

It seems logically to follow that the advertising agency, as that business is generally conducted today, is the agent of the advertiser -- certainly so far as the undertaking and execution of advertising campaigns is concerned.

The reasoning of the decisions seems to coincide with the business fact. Many published statements of advertising agency executives testify to the fact that the advertising agency is wholeheartedly dedicated to the welfare of its client. Roy S. Durstine, for example, writes:

"The agency today is the advertiser's partner.... It is the business of the agency to make contacts with sellers of advertising space and materials in behalf of the advertiser, to conduct the intricate purchase of space and materials, to see that the advertising is as ordered and to act as a central disbursing office in paying the advertiser's bills."⁵

An even more pointed statement on the part of a leading advertising agency executive, the late F. Wayland Ayer,⁶ follows:

"It should be the sole business of this agency (N. W. Ayer & Son) to serve its clients. Naturally, the basis of remuneration for this service then becomes a matter of mutual agreement between our clients and ourselves. None other than we could know the cost of the service. None other than the client could judge its value to him."

Certainly this statement is an unequivocal indication of alliance with the advertiser, and necessarily an indication of interest adverse to the publisher.

Contracts between advertisers and advertising agencies invariably contain an offer by the agencies of a personal, professional, and marketing service to advertiser-clients. None of these contracts specifies a possible, potential, or actual service to the publisher. It would thus appear that opinion among advertising agencies and the Courts is identical as to the character and type of service rendered the clients.

So completely established is the fact that the agency is the agent of the advertiser, that advertisers have, in litigation, been held liable for the acts of advertising agencies retained by them. In the New York case of *Montague vs. All-Package Grocery Stores*⁷ (1918) the agent was employed to publish a house organ

¹ 288 Pac. 131.

² 128 Atl. 103.

³ 32 Fed. (2nd) 669.

⁴ 249 N. Y. 593.

⁵ Durstine, Roy S., "This Advertising Business," Scribner's, 1928, page 97.

⁶ "Editor & Publisher," March 26, 1921, page 12.

⁷ 169 N. Y. S. 920.

for the All-Package Grocery Company. He did not pay the publishing bills, for which he had received funds from the advertiser. In the litigation which arose, the Court held that the advertiser, as the undisclosed principal, was liable for the payment of the bills; in the advertiser's subsequent suit against the agent, the agent was held to be guilty of conversion of funds which he had held in a fiduciary capacity.

A somewhat similar state of facts existed in the New York case of *Clarke vs. Watt*¹ (1913). There, too, the agent failed to pay bills which he had contracted with a publisher. The Court said in part:

"The contract bears upon its face indisputable evidence that the advertising contracted for is for the benefit of some other person than the H. B. Kohler agency. This being so, the plaintiff (the publisher) was entitled to assume that there was an undisclosed principal other than the advertising agency.... The defendant, having received the full benefit of the advertising, the agent virtually acting for both parties, and the agent having disappeared and become irresponsible, it is difficult to see the justice of the rule which allows the real beneficiary to escape payment, and deprives the plaintiff (the publisher) of the fruits of his labor...."

The advertiser was twice out of pocket!

It is clear that it is the contract between the advertiser and the agency which creates the agency relation; this contract defines the scope of the agency's services; it provides the method by which the agency is to be paid. Whether it be formally executed, or merely implied and in conformity with the custom of the trade, it covers the relationship. There is no necessity for a corresponding contract between the agency and the publisher.

The rights and duties of principal and agent have been so carefully considered in a long line of decisions that in most instances the law and equity of any given set of circumstances easily can be determined.

"The agent is not entitled to avail himself of any advantage that his position may give him to profit beyond the agreed compensation for his services. He will be required to account to his employer or principal for any gift, gratuity, or benefit received by him in violation of his duty, or any interest acquired adverse to his principal, without a disclosure, though it does not appear that the principal has suffered an actual loss by fraud or otherwise."²

Thus it will be seen that the agent owes the principal undivided loyalty, unless the principal has contracted for less. In *Hewitt and Hosier vs. Norman Lichty*³ the Court stated that "an agent owes to his principal the utmost good faith, and is bound to disclose to him every material fact relating to the conduct of the business entrusted to him."

Because of the close relationship between the advertising agency and the advertiser -- which both a growing body of legal decisions and business practice have established -- it is the duty of the modern advertising agency to deal with the publisher as with a stranger. There is no legal community of interest between the publisher and the advertiser, and therefore, there can be no legal community of interest between the agency, representing the advertiser, and the publisher with whom the advertiser deals. In law, as in morals, no man can have two masters of conflicting interests. The agency must advance the interests of its principal -- the advertiser.

The money which the modern agency usually receives from its advertiser-clients is divisible into two parts: First, money which the agency receives by way of fee or discount for its services; and second, the money which the agency receives expressly for payment to publishers. The second class of money is held by the agency in a fiduciary capacity, under an implied trust, and is never its property. The

commingling of funds properly belonging to the agency with funds held by the agency expressly for payment to publishers is legally a breach of the fiduciary relation.

The modern agency is not liable for payment for space ordered on behalf of an advertiser. Only if the agency has assumed, by means of an express agreement, personal liability, can it be held to pay for space for which its client is unable or unwilling to pay. A mere trade practice, by which the agency found it to be good business to pay the publisher in the event of a default by the advertiser, is not sufficient to create a legal obligation upon it so to do. The agency has no title to the space for which it contracts, and is not, strictly speaking, a party to the contract.

Because of his position of trust, the agent should show strict impartiality towards the various mediums of advertising. He is morally and legally bound to purchase space and materials on the best terms available.

It would appear to be established, therefore, that the modern advertising agency, in case of conflict of interest between the advertiser and the publisher, should look to the advertiser for instructions.

In summary, then, it may be said that, from the legal point of view, the modern advertising agent is the agent solely of the advertiser and that he owes no obligation to the proprietor of any medium. Moreover, he is not required to accept any contingent liability for the expenses of advertising he undertakes so long as he remains within the apparent scope of his authority as the advertiser's agent. And regardless of the conduct of the agency, the advertiser is directly liable for the payment of all bills arising from the work of the agency on his account -- whether he has an agency that turns out to be irresponsible or not.

Thus, in law, the advertising agency serves the advertiser.

From this conclusion can be drawn an important corollary. One of the frequent arguments advanced to discourage modification of the discount system is that "rebating" (by which is meant the acceptance of less than full agency discount by the agency) is unethical. Actually, and in law, a rebate is a discount or drawback between seller and buyer or other parties of adverse interest. The agency and the advertiser are not parties of adverse, but of identical, interest. The agency is the agent of the advertiser, acting in his behalf, and both under his direction and under his authorization. It is, therefore, a misnomer to call any adjustment of compensation between them a rebate. Any such adjustment between them is entirely lawful.

In the case of *Kastor vs. Elders*, previously cited, the Court said: "It appears that the agent sometimes gave his advertising patrons the benefit of part of the agent's commission, but this is a matter of contract in each instance, and is determined by the nature of the account, the kind and extent of service required of the agent, competition, etc." Since, then, the use of the term rebate is neither accurate nor justified, and since both ethically and legally the agent and the advertiser are entitled to make whatever bargain they find mutually satisfactory, there is no compulsion that can be exerted by any group of publishers or advertising agencies to force a particular agent and a particular advertiser to agree to any arrangement that they do not find mutually satisfactory. It would appear that if the advertiser is entitled to loyalty from his advertising agent (which would include the duty of the agent to purchase space for his client upon the best terms available) and, if the advertiser is free to deal with his agent, upon such terms and conditions as might be mutually agreeable, a combination or conspiracy to deprive the advertiser of the agent's loyalty or to force the advertiser to do business upon arbitrary terms, would be actionable at law.

From the standpoint of legal analysis, therefore, it appears that the intended rigidity of the discount system of advertising agency compensation lacks logical support. In the eyes of the law, the advertising agent is entirely free to modify his service or his charges to meet the continually changing needs of the advertiser.

¹145 N. Y. S. 145.

²21 R. C. L. 826.

³147 Iowa 270.

Chapter VI

THE SYSTEM IN ACTUAL OPERATION FROM THE ADVERTISER'S VIEWPOINT

How is the discount system actually applied today? Has it restricted the advertiser's use of the agency and thereby hampered the development of the agency?

In response to a questionnaire¹ mailed by the Trustees for the Agency Compensation Study under the auspices of the Association of National Advertisers in May, 1934, to 8900 national advertisers (that is, to all except publishers) listed in the April, 1934 issue of "Standard Advertising Register," 924 national advertisers -- 10.4 per cent of those queried -- replied. The information which they gave makes it possible to answer the questions asked in the opening paragraph of this chapter.

Table I

QUESTIONNAIRES RECEIVED CLASSIFIED ACCORDING TO SIZE OF APPROPRIATION²

Classification	Number	Percentage of Total Reporting
Under \$50,000	489	52.9
\$50,000 to \$99,999	163	17.6
\$100,000 to \$249,999	119	12.9
\$250,000 to \$499,999	69	7.5
\$500,000 to \$999,999	26	2.8
\$1,000,000 and Over	33	3.6
Undesignated	25	2.7
Total	924	100.0

In addition to the 924 complete questionnaires, 24 were received which were either too incomplete to use or were from firms that had done no advertising during 1933. Before the information taken from these questionnaires can be accepted as authentic, it should be shown that these replies constitute a truly representative sample of the total group of advertisers.

In the first place, the total replies received (924) constitute approximately 10.4 percent.³ It is generally conceded that, for a group of several thousand, a ten per cent sample is entirely adequate.

In the second place, moreover, the total volume of advertising represented by the firms supplying information is approximately \$175,375,000. This figure was obtained by (1) multiplying the number of returns for each classification by the mid-point or median figure of the class interval,⁴ and (2) by apportioning the few questionnaires with undesignated appropriations into classifications in the same proportions as the balance of the returns fell.

This sum of \$175,375,000, obtained by the method described in the preceding paragraph, represents 10.4 per cent of the total spent for national advertising during 1933. It represents 10.4 per cent because this is the ratio of 924 questionnaires to the list of 8900 national advertisers queried. When the sum of \$175,375,000 is divided by 10.4 per cent and the result multiplied by 100, the figure for 8900 advertisers, or 100 per cent, would amount to \$1,686,000,000. This figure compares closely with a previous estimate of \$1,761,000,000.

In the third place, the apportionment of appropriations according to size compares favorably with other indices. The following comparison will be of interest:

¹See Appendix, page 171.

²This tabulation was secured from answers to Question XV.

³Throughout the statistical analysis which follows, all fractions will be rounded off to the nearest one-tenth of one per cent.

⁴The mid-point or median figure of the class interval is the figure halfway between both limits of the classification. For example, \$25,000 is the mid-point of appropriations under \$50,000, \$75,000 is the mid-point of appropriations from \$50,000 to \$99,000, and so on.

⁵See page 141, Statement in behalf A. N. A.

Table II

APPORTIONMENT OF ADVERTISING APPROPRIATIONS ACCORDING TO SIZE

Size	Questionnaire Returns ¹	Figures Based on National Advertising Records ²
	Per cent	Per cent
Under \$50,000	54.4	57.5
\$50,000 - \$99,999	18.1	12.9
\$100,000 - \$249,999	13.2	12.6
\$250,000 - \$499,999	7.7	7.2
\$500,000 - \$999,999	2.9	4.3
\$1,000,000 and Over	3.7	5.5
	100.0	100.0

Measured by the available corroborative check-ups, it would seem that the information derived from the questionnaire returns and used in this analysis are truly representative, and may, therefore, be justly regarded as indicating the experience of typical national advertisers. Interviews with a number of advertisers, for the purpose of endeavoring to check on questionnaire returns, revealed the fact that some advertisers, who had compensation arrangements which were contrary to the standard method, failed to fill out questionnaires because of an unfounded fear that they might lose such arrangements if they revealed their nature in writing. It is, therefore, probable that the statistics which follow present a somewhat smaller degree of divergence from the discount system than would be shown by a complete and candid report from all advertisers, were all the facts available.

At the very outset, it is necessary to admit the fact that a basic dissatisfaction with agency relationships as they exist was indicated by the national advertisers reporting. This dissatisfaction is evidenced by Table XXIX³ which indicates that approximately 60 per cent of those reporting, preferred some sort of fee basis for compensation of advertising agencies. It is illuminating to note that this preference, moreover, was not based on a desire to seize agency profits, but to secure better work from agencies, and to have agencies available for a greater variety of tasks. For, even among advertisers with small appropriations -- the group that is supposedly "carried" by the excess discounts of larger accounts -- there is very nearly as preponderant a preference for fee payment as there is among the larger advertisers.

Further clarification of this lack of complete satisfaction is to be found in Table XIV⁴ which shows the number of advertisers who employ specialists to do what the advertising agency is presumably equipped to do. Going further, in considering this table, one is struck by the fact that the small advertiser is as active an employer of outside specialists as the large.

¹These percentages were secured after omitting from the total number those questionnaires which were undesignated as to size of appropriation.

²The apportionment of appropriations by class intervals was calculated from national advertising records as follows: An analysis of the data given in "An Analysis of 285 National Advertising Budgets, 1932-33" published by the Association of National Advertisers indicated that, for all classes of advertisers, the average expenditure for magazine advertising for 1933 was 20 per cent. Therefore, by multiplying the figures given in National Advertising Records for magazine expenditures by company by 5 -- since magazine appropriations averaged 20 per cent of the total -- it was possible to set up a table of theoretical total advertising expenditures. Obviously, such a table is purely an estimate -- yet the reasonably close correlation existing between it and the distribution of appropriations taken from the questionnaire returns for the present study adds an additional bit of evidence corroborative of the presumption that the questionnaire returns constitute a truly representative sample of all national advertisers.

³This table and other tables which are not reproduced or commented on here appear in Part IV (appendix) beginning on page 177.

⁴See page 50.

Table III

THE EXTENT OF THE USE OF AGENCIES AND OTHER SERVICE ORGANIZATIONS BY ADVERTISERS EMPLOYING AGENCIES

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
THOSE PLACING ADVERTISING IN DISCOUNT MEDIUMS THROUGH AGENCY								
Number	1403	1448	105	65	25	31	18	795
Percent	96.0	96.7	92.1	97.0	96.3	100	78.3	95.6
THOSE PLACING ADVERTISING IN NON-DISCOUNT MEDIUMS THROUGH AGENCY								
Number	239	94	67	35	14	22	14	485
Percent	57.0	62.6	58.7	52.2	54.0	71.0	61.0	58.4
THOSE USING SPECIAL SERVICES RENDERED BY AGENCY								
Number	200	111	75	57	24	30	10	507
Percent	47.6	74.0	65.8	85.1	92.5	96.6	43.5	66.9
THOSE USING PROFESSIONAL SPECIALISTS OTHER THAN ADVERTISING AGENCY								
Number	184	82	77	41	19	23	4	439
Percent	43.8	54.6	67.5	61.2	73.1	74.2	17.4	51.8
TOTAL NUMBER USING AGENCY								
	420	150	114	67	26	31	23	831
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

This table was secured from information given in answer to Question V, tables A, B, C and D.

The table on the preceding page shows the number of advertisers, by size of appropriation, who employ such outside specialists as are listed in Table XIV. It is interesting to note that nearly 52 per cent of all reporting advertisers use such specialists. Based upon this evidence alone, it is no wonder that 40 per cent of these reporting voice more or less dissatisfaction with the discount method, in spite of the fact that it is the system ostensibly in use.

Obviously, this emphasizes the necessity for analysis and diagnosis. The conclusion appears inescapable that: Where there is so much dissatisfaction, there must be some defect in the system of advertising agency compensation.

It has been pointed out that the American Association of Advertising Agencies has certain standards of agency practice under which the duties and the method of compensation of the agency are formulated with definiteness -- in a positive fashion on service and in a negative manner on compensation. The question comes to mind: Is there evidence of the same rigidity in actual agency practice?

There is hardly a tabulation to be made from the questionnaire returns that does not show some tendency toward a breaking up of the discount system. Even for a point on which there has been, supposedly, so high a degree of standardization as the disposition of the cash discount, it appears that 15.2 per cent of the reporting advertisers do not receive the cash discount when they earn it. It will be noticed from Table IV that the bulk of advertisers who do not receive cash discounts is in the group with the smaller appropriations. (It is possible that the retention of the cash discount by the agency is a matter of agreement between advertiser and agency as a means of supplementing a discount which may be inadequate for the service the advertiser needs from his agency. If this supposition be true, then the need for an arrangement of compensation that does not have to be modified in such makeshift fashion is evident.)

A more striking evidence of dissatisfaction with the system is the fact that, of the 94 direct advertisers' reporting, 57, or 61 per cent of them, use discount mediums -- in many cases buying at net rates.¹ Furthermore, as reported in Table XII on page 48, 161 advertisers employing the services of an agency placed advertisements direct in all types of discount mediums. (Many of these purchased space at net rates.) As one proceeds further with this study, it becomes clearer that the number of deviations from the accepted system are highly significant.

It will be noticed, further, in Tables VI and VII² that, whereas the discount method prevails for discount mediums, nevertheless, nearly every method of agency compensation is used for every type of medium. Although the discount system of agency payment is supposed to be observed, it would seem that it tends to break down under the pressure of changing conditions. It is equally interesting to observe that the advertisers with small appropriations receive approximately the same scope of service from their agencies as do large advertisers in return for a payment which does not exceed the regular discount.³

It has been shown the agency is the agent of the advertiser, and in legal language, should be regarded as a party of adverse interest to the publisher. Is there any further evidence of this fact as shown in the questionnaires?

Consider, first, the agent as a developer of new advertisers. Since the days of the first agencies, the argument has been advanced that one of the services for which mediums ostensibly allow an agency discount is for the development of new advertisers. Yet the statements of advertisers themselves indicate that agencies have had a very small share of the responsibility for starting new accounts. It is true that some bias against admitting obligation to an agency or to space salesman as the original impetus for advertising could be expected. It is human to want to monopolize credit for a seemingly intelligent action. Yet the proportion of advertisers who claim sole credit for the idea of advertising is so great that, discount it as you will, it is difficult to evade the thought that advertising agencies have

¹See Table XXVII, page 212.

²A direct advertiser is one who deals directly with an advertising medium, that is to say, he does not use an advertising agency.

³See Table V, page 39 and Table XVI, page 177.

⁴For full tables see pages 181 and 189.

⁵See Table XV, page 51.

Table IV

DISPOSITION OF CASH DISCOUNTS

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>YES</u>								
Number	329	122	104	65	25	30	17	692
Percent	79.3	81.8	93.7	97.0	96.2	96.8	77.3	84.3
<u>NO</u>								
Number	84	26	6	2	1	1	5	125
Percent	20.2	17.5	5.4	3.0	3.8	3.2	22.7	15.2
<u>DON'T KNOW</u>								
Number	2	1	1	0	0	0	0	4
Percent	0.5	0.7	0.9	---	---	---	---	0.5
<u>NUMBER ANSWERING</u>	415 (100%)	149 (100%)	111 (100%)	67 (100%)	26 (100%)	31 (100%)	22 (100%)	821 (100%)

This compilation represents the answers to Question III.

Table V

CLASS OF RATES PAID FOR DIRECT PURCHASE OF SPACE IN DISCOUNT MEDIUMS

	Magazines	Newspapers at National Rates	Radio Time at National Rates	Outdoor at National Rates	Farm Papers	Trade or Merchandising Publications	Industrial or Technical Publications	Professional Publications	Other
PAID GROSS RATES FOR ALL SPACE OR TIME PURCHASED									
Number	50	37	14	7	12	61	37	15	9
Percent	64.9	57.8	43.7	43.7	57.2	64.2	57.8	60.0	56.2
PAID NET RATES FOR ALL SPACE OR TIME PURCHASED									
Number	13	12	7	4	4	15	7	3	6
Percent	16.9	18.8	21.9	25.0	19.0	15.8	11.0	12.0	37.5
PAID GROSS RATES IN SOME AND NET RATES IN OTHERS									
Number	14	15	11	5	5	19	20	7	1
Percent	18.2	23.4	34.4	31.3	23.8	20.0	31.2	28.0	6.3
<u>NUMBER ANSWERING</u>	77 (100%)	64 (100%)	32 (100%)	16 (100%)	21 (100%)	95 (100%)	64 (100%)	25 (100%)	16 (100%)

This is a summary of the answers to Question VI (b).

Table VI

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS

	Magazines	Newspapers at National Rates	Radio Time at National Rates	Outdoor at National Rates	Farm Papers	Trade or Merchandising Publications	Industrial & Technical Publications	Professional Publications	Other
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS									
Number	470	353	187	101	167	287	139	84	11
Percent	77.1	81.5	83.2	78.3	78.7	65.1	61.3	62.7	73.3
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT									
Number	27	8	4	3	1	24	16	7	0
Percent	4.4	1.8	1.8	2.3	1.9	5.5	7.0	5.2	---
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS									
Number	31	14	5	3	3	27	10	7	0
Percent	5.1	3.2	2.2	2.3	2.4	6.1	4.4	5.2	---
PERCENTAGE ON NET RATES (fixed by agent or advertiser)									
Number	44	34	14	11	17	54	28	23	3
Percent	7.2	7.9	6.2	8.5	8.0	12.2	12.3	17.2	20.0
PERCENTAGE ON GROSS RATES OF MEDIUM (fixed by agent or advertiser)									
Number	9	9	6	6	11	23	21	8	0
Percent	1.5	2.1	2.7	4.7	5.2	5.2	9.3	6.0	---
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)									
Number	27	15	7	5	8	26	13	5	1
Percent	4.4	3.5	3.1	3.9	3.8	5.9	5.7	3.7	6.7
SPECULATIVE BASIS (on returns from advertising)									
Number	2	0	1	0	0	0	0	0	0
Percent	0.3	---	0.4	---	---	---	---	---	---
OTHER METHOD									
Number	0	0	1	0	0	0	0	0	0
Percent	---	---	0.4	---	---	---	---	---	---
NUMBER ANSWERING									
Number	610	433	225	129	212	441	227	134	15
Percent	61.0	100%	100%	100%	100%	100%	100%	100%	100%

This summarizes information from Table A of Question V.

Table VII

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

	Car Cards	Direct Mail	Newspapers at Local Rates	Radio Time at Local Rates	Outdoor at Local Rates	Trade or Merchandising Publications	Industrial or Technical Publications	Professional Publications	Other
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)									
Number	24	102	68	45	24	169	110	53	3
Percent	34.8	37.7	53.9	60.0	58.5	66.8	72.4	65.2	37.5
FEE BASIS (having no relation to cost of medium)									
Number	20	109	33	19	10	49	24	13	0
Percent	28.9	40.2	26.2	25.3	24.4	19.4	15.8	16.1	---
NO CHARGE FOR AGENCY SERVICE									
Number	25	57	23	11	7	34	18	14	5
Percent	36.3	21.0	18.3	14.7	17.1	13.4	11.8	17.5	62.5
SPECULATIVE BASIS (on returns from advertising)									
Number	0	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---	---
OTHER									
Number	0	3	2	0	0	1	0	1	0
Percent	---	1.1	1.6	---	---	0.4	---	1.2	---
NUMBER ANSWERING									
Number	69	271	126	75	41	253	152	81	8
Percent	100%	100%	100%	100%	100%	100%	100%	100%	100%

This table summarizes information from Table B of Question V.

Table VIII

FACTORS THAT INFLUENCED ADVERTISERS TO BEGIN ADVERTISING

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>OWN INITIATIVE</u>								
Number	409	139	105	58	21	26	15	773
Percent	90.0	90.3	95.3	93.6	87.5	92.9	100	91.3
<u>ADVERTISING AGENT</u>								
Number	26	7	4	2	3	2	0	44
Percent	5.8	4.5	3.6	3.2	12.5	7.1	---	5.2
<u>MEDIUM SALESMEN</u>								
Number	6	1	1	0	0	0	0	8
Percent	1.3	0.7	0.9	---	---	---	---	0.9
<u>COMBINATION OF TWO OR THREE OF ABOVE</u>								
Number	13	7	0	2	0	0	0	22
Percent	2.9	4.5	---	3.2	---	---	---	2.6
<u>NUMBER ANSWERING</u>	454	154	110	62	24	28	15	847
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

These are the answers to Question XXI.

not had the part claimed for them in developing new advertisers at least in later years. In extenuation of the agency with respect to this assertion, it should be said that advertisers who have decided to advertise often appear to be undecided on that question when seeking an agency. When an agent receives his appointment from an advertiser who has assumed a pose of indecision in early negotiations, the agent quite naturally comes to believe that he has "sold that advertiser on advertising."

Corroborative evidence of the conclusion reached in the preceding paragraph from Table VIII on page 42 can be found in the compilation of Table IX on page 44.

The questionnaire on which these conclusions are based was in the hands of advertisers at a time when appropriations were being increased.¹ Nevertheless, it is clear from the records that agencies were taking a small part in encouraging new business. It will be noticed that 426 advertisers reported increasing solicitations from agencies, whereas 438 reported either no change or an actual decrease. Significant is the fact that marked increasing activity of solicitation took place for the larger advertisers. In percentages, approximately 50 per cent more advertisers of the "over-a-million" classification reported increasing activity than did the under-fifty-thousand group. One is, therefore, drawn to the conclusion that, by and large, advertising agencies have not been striving to develop new or small advertisers, but have been vying with each other to secure the accounts of those firms who have already become large advertisers. Agency effort would appear to be toward solicitation of existing advertising dollars rather than the development of new dollars for advertising.

Another service for which agencies are supposed to be supported by mediums is that of serving as a credit cushion. It would appear, from Table X on page 45 that the importance and extent of this factor of agency cooperation has been over-estimated. Approximately one-third of the advertisers reporting indicate that their advertising agencies advance money for payment of advertising space or time before such advertisers pay their agencies.... There is some reason to believe that this figure is high; in the personal interviews made to verify the representative character of the mailed responses, interviewers found a substantial sprinkling of advertisers who were under the impression that agencies had to pay for all advertising space promptly on the use of that space, and that, if bills were paid to the agency monthly, the agency of necessity had to advance a considerable part of each monthly payment to the publisher (or publishers) before the advertiser's check reached him. Without more complete information as to the understanding of advertisers as a group concerning the terms under which agencies purchase space for them, it would be impossible to re-interpret the responses to this question. But it is safe to assume that the response given does not exaggerate the service of the agency as a credit cushion.²

There are few services the agency can perform for the advertiser more important than that of selecting mediums, and, presumably, few for which the advertiser needs the services of his agency more. Nevertheless Table XI on page 46 shows that, of 825 advertisers answering this question, only 34 permit their agencies full scope in the selection of mediums, and 201, or nearly 25 per cent, allow their agencies no voice whatsoever. Although it is impossible to tell whether the agency or the advertiser had the greater weight in selecting mediums that are "jointly selected," the testimony indicates that the advertiser does not utilize his agency to the extent that the agency's facilities should justify.

Moreover, the agency appears to be restricted insofar as making commitments for space, and the incurring of art and mechanical charges, and even the writing of copy, are concerned. Tables XIX and XX³ show that over 95 per cent of the advertisers reporting require agencies to submit every purchase for approval, and over 97 per cent of the advertisers insist on approving every piece of copy before it is used. Possibly this is a wholesome degree of caution on the part of the advertiser, but nevertheless, it indicates that the agency is not only the advertiser's "agent," but that he is a very closely supervised "agent."

Thus far, the evidence of the questionnaires points to the cramping influence of the present agency-advertiser relationship. The pertinent question arises: Do the returns indicate evidence of change -- in practice -- in the system to meet

¹ National Advertising Lineage, "Advertising and Selling," June 21, 1934, page 30.

² See testimony of Frank Braucher, Vice President, Crowell Publishing Co. (This testimony, being too lengthy for reproduction on this page as a footnote, is given at the end of this chapter on page 57.)

³ See pages 179 and 180.

Table IX

SOLICITATION OF ACCOUNTS BY AGENCIES

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>INCREASING</u>								
Number	200	84	61	40	15	19	7	426
Percent	43.9	52.8	53.0	60.6	60.0	65.6	46.6	49.3
<u>DECREASING</u>								
Number	138	36	21	6	7	3	4	215
Percent	30.4	22.6	18.3	9.1	28.0	10.3	26.7	24.9
<u>NO CHANGE</u>								
Number	117	39	33	20	3	7	4	223
Percent	25.7	24.6	28.7	30.3	12.0	24.1	26.7	25.8
<u>NUMBER ANSWERING</u>	455 (100%)	159 (100%)	115 (100%)	66 (100%)	25 (100%)	29 (100%)	15 (100%)	864 (100%)

This tabulation was secured from answers to Question X (a).

Table X

FINANCING SERVICE OF THE AGENCY

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>YES</u>								
Number	131	53	41	21	12	9	8	275
Percent	31.3	35.6	36.6	32.3	46.2	31.0	36.4	33.4
<u>NO</u>								
Number	216	71	58	39	13	18	12	427
Percent	51.7	47.6	51.8	60.0	50.0	62.1	54.5	52.1
<u>DON'T KNOW</u>								
Number	71	25	13	5	1	2	2	119
Percent	17.0	16.8	11.6	7.6	3.8	6.9	9.1	14.5
<u>NUMBER ANSWERING</u>	418 (100%)	149 (100%)	112 (100%)	65 (100%)	26 (100%)	29 (100%)	22 (100%)	821 (100%)
<u>BREAKDOWN OF THOSE ANSWERING "YES"</u>								
Number	126	50	36	20	10	0	0	262
Percent	30.2	33.6	32.2	30.8	38.5	0	0	31.9

This represents the answers to Questions IV (a) and IV (b).

Table XI
RESPONSIBILITY FOR THE SELECTION OF MEDIUMS

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undesignated	Total
AGENCY								
Number	17	10	2	2	0	3	0	34
Percent	4.1	6.7	1.8	3.0	---	5.5	---	4.1
ADVERTISER								
Number	125	30	24	9	2	5	6	201
Percent	29.9	20.1	21.3	13.4	7.6	11.0	27.2	24.4
JOINTLY								
Number	276	109	87	56	24	22	16	590
Percent	66.0	73.2	76.9	83.6	92.4	83.5	72.8	71.5
NUMBER ANSWERING	418 (100%)	149 (100%)	113 (100%)	67 (100%)	26 (100%)	30 (100%)	22 (100%)	825 (100%)

This compilation represents the answers to Question II (a).

changing conditions? Yes. Advertisers point to many changes. Probably the most important evidence that has been brought to light is revealed by Table XII on page 48. Here it is found that 161, or approximately 20 per cent, of those advertisers who employ advertising agencies are placing some part of their advertising appropriations from their own offices -- not through their agency -- with discount mediums.¹ True, a majority, 79 per cent, of these advertisers would continue to use agencies if they could buy all space and time at net rates. But it can hardly be said that the agency is capitalizing all of its facilities when so large a proportion of agency clients as 20 per cent find it desirable to do for themselves a part of the job they might have agencies do on a basis which some agencies describe as "no cost," i.e., no cost to the advertiser.

Table III -- already reproduced on page 36 indicates that a substantial number of advertisers of all classes do not place advertisements in non-discount mediums through their agencies. There are two possible explanations for this condition: First, it may be that many agencies will not handle such placing except at a price that makes it desirable for the advertiser to do the work himself; or, second, the advertiser would prefer to do his own placing, and uses an agency for discount mediums purely because such a course is the line of least resistance.

Regardless of where the fault lies, it is certain that advertisers have not used their agencies to the extent that agency facilities would warrant. Table XIII on page 49 shows that only 176 of the 723 advertisers reporting on this question spent the entire amount of their appropriations through the agencies they had employed -- in other words, only one-quarter of the clients of advertising agencies made full use of agency facilities.

This picture is made more distinct by Table III (previously cited on page 36) which showed that more than 50 per cent of the advertisers reporting had seen fit to rely on specialized services -- services rendered by individual organizations, in almost every case, who performed functions for which the agency is theoretically qualified (if not actually equipped to do).

The modern advertising agency, with its many departments, and its impressive corps of research workers and specialists, should be fully equipped to render a complete advertising service. However, Table XIV on page 50 at least shows a prevailing belief, if it does not point to the fact, that the major job of the advertising agency is "placing" advertisements, because so many firms are going outside of the agency to employ professional specialists.

It is impossible to escape the conviction -- if we judge by the evidence of the questionnaires -- that agencies as a whole have failed to develop the important field of auxiliary services. Table XV on page 51 not only catalogues a large variety of methods of compensation for these important auxiliary services, but suggests that agencies have not become necessary to advertisers for these services. It is interesting to notice that even the large accounts, which traditionally are supposed to secure many free services to make up for surplus discounts, receive relatively little "no charge" service.

Advertising agencies perform, or could perform, a service of which advertisers stand in vital need. Table XVI on page 52 bears witness to the fact and offers food for thought for publishers in particular. A substantial majority of advertisers would continue using agencies if they were able to buy space at net rates, and nearly 65 per cent of them would, they report, continue to use advertising agencies as much as they do now. But all the important evidence tends to show that they do not now use agencies to the extent of their needs or to the extent of agency facilities.

If so many advertisers do not use agencies to the extent of their needs, or to the extent of agency facilities, if they are forced to do a substantial portion of their advertising without benefit of their agencies' advice or cooperation, and if they are forced to rely on a legion of experts and counsellors whose work duplicates many agency functions, then it stands to reason that some part of the system is not operating efficiently. It has been indicated that the theoretical rigidity of the agency compensation "system" is going through a process of change as revealed by tabulation after tabulation. But apparently it is only a small group of adventurous firms that have had the courage to make arrangements contrary

¹Observe well the words "discount mediums." These words mean that such advertisers, even though they may be required to pay the gross rate to the discount medium -- that is to say, the rate that is higher than the rate for an agency -- and even though they have an agency, still prefer to deal directly with such mediums.

Table XII

ATTITUDE OF ADVERTISERS EMPLOYING AGENCIES BUT PLACING ADVERTISING DIRECT WITH DISCOUNT MEDIUMS TOWARD THE RETENTION OF ADVERTISING AGENCIES IF ADVERTISERS WERE ABLE TO BUY SPACE AT NET RATES

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
(A)								
YES	71	22	16	9	2	6	1	127
Number	82.6	78.6	76.2	81.8	50.0	75.0	33.4	78.8
Percent								
NO	14	6	5	1	2	2	1	31
Number	16.2	21.4	23.8	9.1	50.0	25.0	33.3	19.3
Percent								
DIDN'T ANSWER	1	0	0	1	0	0	1	3
Number	1.2	---	---	9.1	---	---	33.3	1.9
Percent								
NUMBER ANSWERING	86	28	21	11	4	8	3	161
(100%)		(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)
(B) BREAKDOWN OF THOSE ANSWERING "YES" TO (A)								
AS MUCH AS AT PRESENT	48	18	4	6	2	5	1	84
Number	67.7	81.8	25.0	66.7	100	83.3	100	66.2
Percent								
LESS THAN NOW	7	3	9	3	0	1	0	23
Number	9.8	13.6	56.3	33.3	---	16.7	---	18.1
Percent								
MORE THAN NOW	7	0	1	0	0	0	0	8
Number	9.8	---	6.2	---	---	---	---	6.3
Percent								
DIDN'T ANSWER	9	1	2	0	0	0	0	12
Number	12.7	4.6	12.5	---	---	---	---	9.4
Percent								

The information given in this tabulation was secured from answers to Questions VI (b), XIX (a) and XIX (b).

Table XIII

BREAKDOWN OF APPROPRIATIONS TO PERCENTAGE SPENT DIRECT AND THROUGH AGENCY

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
0.1 - 9.9% OF APPROPRIATION SPENT DIRECT	28 7.8	13 9.6	11 13.9	5 8.3	4 16.6	5 17.2	0 ---	69 9.5
10 - 19.9% OF APPROPRIATION SPENT DIRECT	37 10.3	12 8.8	7 7.0	8 13.3	2 8.3	2 6.9	3 20.0	71 9.8
20 - 29.9% OF APPROPRIATION SPENT DIRECT	52 14.5	14 10.3	12 11.9	9 15.1	8 33.3	5 17.2	4 26.7	104 14.4
30 - 39.9% OF APPROPRIATION SPENT DIRECT	17 4.7	4 2.9	8 7.9	5 8.3	1 4.2	4 13.8	2 13.3	41 5.7
40 - 49.9% OF APPROPRIATION SPENT DIRECT	16 4.5	10 7.4	16 15.8	5 8.3	1 4.2	4 13.8	0 ---	52 7.2
50 - 59.9% OF APPROPRIATION SPENT DIRECT	24 6.7	11 8.1	17 16.8	8 13.3	2 8.3	1 3.5	1 6.7	64 8.9
60 - 69.9% OF APPROPRIATION SPENT DIRECT	20 5.6	12 8.8	6 6.0	4 6.7	1 4.2	2 6.9	0 ---	45 6.2
70 - 79.9% OF APPROPRIATION SPENT DIRECT	16 4.5	5 3.7	5 4.9	1 1.7	1 4.2	2 6.9	0 ---	30 4.1
80 - 89.9% OF APPROPRIATION SPENT DIRECT	9 2.5	5 3.7	5 4.9	2 3.3	0 ---	0 ---	1 6.7	22 3.0
90 - 100 % OF APPROPRIATION SPENT DIRECT	27 7.5	12 8.8	3 3.0	3 5.0	0 ---	2 6.9	2 13.3	49 6.8
NONE SPENT DIRECT THEREFORE ALL OR 100% SPENT THROUGH AGENCY	112 31.4	38 27.9	8 7.9	10 16.7	4 16.7	2 6.9	2 13.3	176 24.4
NUMBER ANSWERING	358	136	101	60	24	29	15	723
(100%)		(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

This table represents the answers to Question VII.

Table XIV

PAYMENT FOR SERVICES OF SPECIALISTS

Direct Mail Specialists	Sales or Advertising Consultants	Research Organizations	Free Lance Copy Writers	Artists	Public Relations Counsels	Management Engineers	Creators of Window & Counter Displays	Display Instal-lation Services	Exhibition Specialists	Motion Picture Producers	Package Specialists	Sampling Specialists	Radio Program Bureaus	Electrical Trans-cription Producers	Premium Goods Specialists	Other
Number 109 Percent 85.2	36 90.0	91 97.8	78 89.8	227 93.0	47 87.0	10 83.4	139 82.7	83 90.2	58 90.6	71 92.2	77 92.8	18 85.7	20 77.0	34 82.9	15 83.2	15 88.2
FIXED PERCENTAGE OF AMOUNT SPENT																
Number 14 Percent 10.9	2 5.0	0 ---	6 6.8	12 4.0	5 9.2	0 ---	9 5.4	5 5.4	3 4.7	3 3.9	2 2.4	2 9.5	5 19.2	4 9.8	2 5.6	1 5.9
SPECULATIVE BASIS (on returns from advertising or service rendered)																
Number 4 Percent 3.1	2 5.0	1 1.1	3 3.4	7 2.3	2 3.8	1 8.3	18 10.7	4 4.4	2 3.1	3 3.9	4 4.8	1 4.8	1 3.8	3 7.3	1 5.6	1 5.9
OTHER METHOD																
Number 1 Percent 0.8	0 ---	1 1.1	0 ---	2 0.7	0 ---	1 8.3	12 1.2	0 ---	1 1.6	0 ---	0 ---	0 ---	0 ---	0 ---	1 5.6	0 ---
NUMBER ANSWERING 128 (100%)	40 (100%)	93 (100%)	88 (100%)	298 (100%)	54 (100%)	12 (100%)	168 (100%)	92 (100%)	64 (100%)	77 (100%)	83 (100%)	21 (100%)	26 (100%)	41 (100%)	18 (100%)	17 (100%)

This tabulation summarizes information given in answer to Question XIV.

Table XV

METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES

	Consumer Investigations	Dealer Investigations	Other Research Work	Publicity Service	Radio Talent	Training & Supervising Salesmen	Sales & Service Literature For Salesmen & Dealers	Other
AT COST TO AGENCY								
Number 120 Percent 35.2	114 37.2		96 35.3	85 27.4	49 34.5	13 32.5	33 15.9	1 14.3
COST PLUS FIXED PERCENTAGE								
Number 50 Percent 14.6	37 12.1		38 14.0	43 13.9	65 45.8	6 15.0	78 37.5	1 14.3
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENCY'S CONTRACT PRICE - DIFFERENCE BEING AGENCY'S PROFIT								
Number 1 Percent 0.3	0 ---	0 ---	1 0.4	0 ---	2 1.8	0 ---	1 0.5	0 ---
A PERCENTAGE OF COST TO AGENCY AND AGENCY'S RESALE PROFIT								
Number 2 Percent 0.6	0 ---	1 0.3	0 ---	0 ---	3 2.1	0 ---	1 0.5	0 ---
FEE BASIS								
Number 72 Percent 21.1	63 20.5		63 23.1	75 24.2	7 4.9	6 15.0	52 25.0	2 28.6
NO CHARGE								
Number 95 Percent 27.9	87 28.3		70 25.7	103 33.2	14 9.9	15 37.5	39 18.7	3 42.8
OTHER								
Number 1 Percent 0.3	5 1.6		3 1.1	4 1.3	0 ---	0 ---	4 1.9	0 ---
NUMBER ANSWERING 241 (100%)	307 (100%)		272 (100%)	310 (100%)	142 (100%)	40 (100%)	208 (100%)	7 (100%)

This tabulation is a summary of information given in answer to Table D of Question V.

Table XVI
ATTITUDE OF ADVERTISERS TOWARD RETENTION OF AGENCIES

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undesignated	Total
(A)								
YES	367	131	103	54	20	25	17	717
Number	82.8	86.8	92.0	85.7	87.0	85.3	89.5	85.3
Percent								
NO	76	20	9	9	3	5	2	124
Number	17.2	13.2	8.0	14.3	13.0	16.7	10.5	14.7
Percent								
NUMBER ANSWERING	443	151	112	63	23	30	19	841
(100%)								(100%)
(B) BREAKDOWN OF THOSE ANSWERING "YES" TO (A)								
AS MUCH AS AT PRESENT								
Number	259	92	77	35	12	17	11	503
Percent	70.6	70.2	74.7	64.8	60.0	68.0	64.7	70.2
LESS THAN NOW								
Number	37	17	15	13	4	5	4	95
Percent	10.1	13.0	14.5	24.1	20.0	20.0	23.5	13.2
MORE THAN NOW								
Number	32	8	2	1	2	2	0	47
Percent	8.7	6.1	1.9	1.6	10.0	8.0	---	6.6
DIDN'T ANSWER								
Number	39	14	9	5	2	1	2	72
Percent	10.6	10.7	8.9	9.3	10.0	4.0	11.8	10.0

This table represents the answers to Questions XIX (a) and XIX (b).

to the tradition of the "system." If one is to judge by the evidence in hand, before the advertising agency can prosper in proportion to its opportunity, it must find some method of making its services more readily available to advertisers, and of inducing the advertiser confidently to utilize its services to the limit.

The analysis of statements of current advertisers points to one definite conclusion: Advertising agency compensation under the discount system, is, except for those firms that have broken with tradition, too rigid to permit full use of agency service without expenditure of considerable energy by the advertiser, in many instances, in getting it, and too open to the charge of bias to allow advertisers to place implicit reliance on advertising agency counsel. As a means of checking and verifying these conclusions, and of extending the investigation into the experience of several years, an analysis was made of the record of advertising accounts, as reflected in the "Standard Advertising Register." The April issue of each year was chosen as being an issue which would present the advertiser-agency relationships after all first-of-the-year changes were made. Data on nine points were gathered:

- (1) The number of advertisers changing agencies each year
- (2) The number of advertisers changing from agency to direct placement
- (3) The number of advertisers changing from direct status to agency representation
- (4) The number of new advertisers
- (5) The number of mortalities among advertisers
- (6) The number of direct advertisers each year
- (7) The number of agency advertisers each year
- (8) The number of mergers, temporary discontinuances, and resumptions
- (9) The total number of advertisers (excluding publishers and advertising agencies) each year.

Three points must be explained before the table will be clear. In the first place, the changes in agency are reported as of one month of each year, so that those firms which made changes more than once in a single year would be reported as making a single change. In the second place, no advertiser was counted as a mortality unless he discontinued advertising and failed to resume advertising at any time during the nine year period. In other words, if an advertiser dropped his advertising in 1927, but resumed it in 1933, he would not have been counted as a mortality. In the third place, when mergers occurred, the merged concerns were not counted as mortalities.

The summary table showing the data secured follows:

	Base Year									
	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Total Number of Direct Advertisers	1618	1780	1832	1933	1421	1585	1664	1891	2007	2380
Total Number of Agency Advertisers	5246	5717	5740	6216	6206	6415	6447	6675	6200	6286
Number of Mergers, Temporary Discontinuances, and Resumptions	-29	-68	-35	-105	15	22	-6	-27	36	
Total Number of Advertisers	6864	7497	7572	8149	7627	8000	8111	8566	8207	8666
Number of Advertisers Changing Their Agencies	807	784	763	788	957	992	976	1039	962	
Number of Advertisers Changing From Agency to Direct Placement	428	461	400	274	425	514	534	594	628	
Number of Advertisers Changing From Direct to Agency Placement	215	267	276	258	235	272	256	266	229	
Net Increase in Direct Advertisers From Agency Changes	213	194	124	16	190	242	278	328	399	
Number of New Advertisers	1428	978	1403	1777	1148	1000	1334	713	1168	
Number of Mortalities	766	835	791	2194	790	911	873	1045	745	
Net New Advertisers	662	143	612	-417	358	89	461	-332	423	

There is a surprisingly large number of observations that can be drawn from these figures. From the point of view of the present study, however, interest should be centered only in uncovering confirmations or contradictions of previous conclusions.

The outstanding fact presented by this table is that, particularly since 1928, the number of advertisers doing business with mediums through advertising agencies is decreasing in relative importance, whereas the group of direct advertisers is increasing. The relationship of (1) advertisers changing from direct placement to the use of agencies to (2) the group of agency users who change to direct placing, stated in annual percentages, is as follows:

1925	1926	1927	1928	1929	1930	1931	1932	1933
50.2	57.9	69.0	94.2	55.2	52.9	47.9	44.8	36.5

In other words, since 1928, an increasingly large group of advertisers have been dropping their agency connections. This is clarified by the following series of percentages, showing the ratio of direct advertisers to the total number of advertisers for each year:

1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
23.6	23.7	24.2	23.7	18.6	19.8	20.5	22.1	24.5	27.5

Until 1928, the percentage of advertisers placing direct remained more or less constant, and after 1928 -- which was apparently the best year for advertising agencies according to the ratio of accounts handled, the ratio of direct advertisers has been growing rapidly.

The following table compares the percentage of mortality among direct advertisers and among agency users:

	1925	1926	1927	1928	1929	1930	1931	1932	1933
Mortalities among direct advertisers ¹	51	142	23	528	26	163	51	212	26
Percentage to total number of direct advertisers ²	3.2	8.0	1.3	27.3	1.8	10.3	3.1	11.2	1.3
Mortalities among users of agencies ¹	715	693	758	1566	764	748	822	833	719
Percentage to total number of agency users ²	13.6	12.1	13.2	25.2	12.3	11.7	12.8	12.5	11.6

Turning this series into a single average, it is found that the annual average mortality for direct advertisers is 7.5 per cent, whereas the average annual mortality for agency users is 13.8 per cent. The agency record, according to these percentages, presents nearly twice as high a death-rate among clients as direct advertisers suffer.

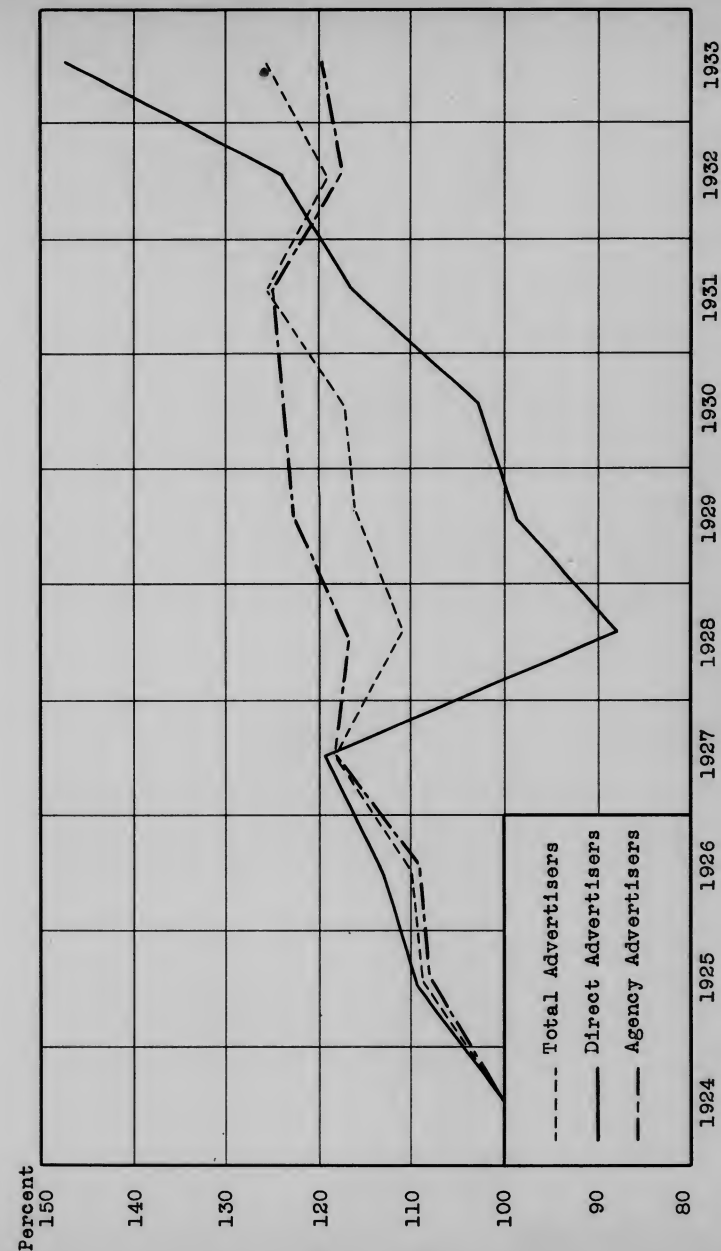
The reason for this situation may well lie in the fact that the direct advertiser is more responsive to changing business conditions than is the agency-guided advertiser.

It is obvious from the chart on page 55 that the direct advertiser quit advertising in 1928, just before the impending depression, in great numbers and that he is returning in great numbers since 1932.

¹To find the number of mortalities of direct and agency advertisers the net increase in direct advertisers from agency changes for each year was added to the total number of direct advertisers of the previous year. The resulting number should have equalled the number of direct advertisers for the current year, provided there were no mortalities or new direct advertisers. However, in every case the resulting number was larger than the number for the current year. Therefore the difference represented the number of mortalities among direct advertisers for the year. This difference was then subtracted from the number of total mortalities to give the number of mortalities among agency advertisers.

²These percentages represent the percentage to the totals of each previous year.

INDICES OF TOTAL, DIRECT, AND AGENCY ADVERTISERS
(1924 = 100)



Another set of comparisons presents a somewhat fuller basis for the drawing of conclusions: The indices of (1) the total number of advertisers, (2) the total number of advertisers using agencies, and (3) the total number of direct advertisers. In each series, the number for the year 1924 is taken as 100 per cent.

	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Total number of advertisers	100.0	109.0	110.0	118.5	111.0	116.4	118.0	126.0	119.5	126.0
Number of agency users	100.0	108.9	109.4	118.5	118.3	122.3	122.9	125.3	118.2	119.8
Number of direct advertisers	100.0	110.0	113.0	119.5	88.0	99.0	103.0	117.0	124.0	147.0

The foregoing information is presented in chart form on page 55.

From this chart and the tabulation on which it is based, one again sees a picture of the relative loss of position of the advertising agency in comparison with the number of direct advertisers after 1928.

From the foregoing evidence, not only does it appear that the agencies have not been important factors in increasing the number of new advertisers since 1928; but there is an unusual mortality found among the accounts that have come to them or that they have developed. (By mortality, it should be repeated, is meant an advertiser who disappeared from the record and failed to reappear on the scene as an advertiser during these nine years.)

In the nine year period covered by the data on hand, 10,949 new advertisers made their appearance on agency lists. Of this group, at the end of the period there had been a mortality of 8950, or 81.75 per cent. That this large number of mortalities has not been due to general business conditions is clearly evidenced by the fact that the percentage of agency mortalities to total agency accounts has been practically constant throughout the period of the study, except for the year 1928 -- in spite of the highly shifting economic scene throughout the nine year period.

What general conclusions can be drawn from the information obtained in this check-up study covering a nine year period of agency history?

From the evidence it would seem that advertising agencies have not played as active a part, especially since 1928, as might generally be expected in developing new advertisers.

If one cared to take the viewpoint, the conclusion might be drawn that the advertiser's chances of survival, as an advertiser, do not rest upon agency counsel.

It might be inferred that advertising agency service, as generally interpreted, is becoming less well adapted to the needs of present day business firms, since the trend toward direct advertising seems to have been established.

* * * * *

The convergence of two lines of analysis has been presented: the testimony of advertisers, and the evidence of the record. Both indicate a weakening of the position of the advertising agency, and an increasing tendency for the business house to deal directly with mediums. They also indicate an increasing use of sales and advertising specialists who are in competition with advertising agencies. They do this despite the very obvious conclusion that -- with the growth of competition between duplicate products and the increasing complexities of business -- business men who are not experts in marketing and advertising should feel a greater rather than a lesser need of the services that an advertising agency should be able to offer.

If advertising agencies are equipped to serve business, and if the need for such service is increasing, then one cannot escape the conclusion that agency service is used as incompletely as it is because the terms on which it is offered are not satisfactory to the business men who would otherwise use it.

Note: It is set forth in this study that money which flows to the agent from the advertiser specifically for space used by the advertiser is held by the agent in the capacity of trustee. A proper understanding of that fact, of course, wipes away all claims an agent may make with respect to his usefulness as a reducer of credit risks. (Bad risks which the agent takes on and for which he himself advances money and for which service he may demand some speculative return from the advertiser is another story.) That publishers appreciate this fact is to be found in the court testimony of a long experienced and highly respected publisher, Frank Braucher, Vice President of the Crowell Publishing Company. His testimony, given in the Federal Income Tax case of Fuller & Smith vs. Routzahn (23 Fed. (2nd Series) 959) in the Federal District Court at Cleveland, under direct and redirect examination by Newton D. Baker, counsel for Fuller & Smith, not only covered this point of credit, but a number of other matters. It is therefore repeated here at considerable length under headings which have been inserted.

Who Does The Agency Work For? Under direct examination, Mr. Braucher, when asked to describe an advertising agency from "the publisher's point of view" made these statements:

- Q. Will you describe to the Court from the publisher's point of view what an advertising agency is?
- A. I regard an advertising agency as an organization built up to serve the interests of the manufacturer who advertises, advising him in matters of marketing his products through the assistance of advertising, studying markets, and making the plans, which, with the using of advertising, will make the manufacturer a greater profit on the sale of his goods or sell more goods.

Is The Advertiser's Success Paramount?

- Q. Why, from the publisher's point of view, is it important, if it be important, that the advertisements of advertisers be well constructed and successful in their outcome?
- A. Well, from our viewpoint, if the advertising is successful and well constructed, based upon a knowledge of the advertiser's business and what he is trying to do, the advertising becomes permanent; our advertising automatically renews itself and the amount of advertising increases....

Do Agencies Buy Space? Here is Mr. Braucher's answer:

- Q. Do you sell space to different agencies?
- A. Only for advertisers, not direct to the advertising agency, no.
- Q. Do you sell to advertising agencies what is known as white space?
- A. No.
- Q. Meaning by that space which is at their disposal to be used as they may see fit to place it?
- A. No.

Do Agencies Sell Space?

- Q. Do you, to use your case, although I regard it as typical, -- do you have solicitors and agents representing you seeking to procure advertising?
- A. Yes, we have sixty-five or seventy of them. They are continually calling on advertisers and agents trying to demonstrate to them the value of our magazines as advertising media for the particular purpose the advertiser is trying to accomplish.
- Q. Do you regard recognized advertising agencies as in any sense space agents for your men on whom you rely to sell space in your magazines?
- A. No.

Agency Finance and "Recognition"

- Q. In 1917, '18 and '19,.... to what extent was the financial ability or standing of an advertising agency

- considered in the matter of recognition?
- A. Practically to no extent.
- Q. What are the qualifications of advertising agencies upon which recognition is based?
- A. Ability to plan, prepare space, advertising copy; ability to investigate and determine for the manufacturer what is the best form or kind of advertising for his particular business.

What Is The Importance of an Agency's Financial Condition?

- Q. To what extent is the financial stability of an advertising agency of importance to the publisher?
- A. Only to the extent that he will be able to finance his own operations, pay his office rent, and pay the people whom he employs. It is important to us that he have enough money to conduct his operations in order that there will be no reason for him not passing on to us the money which he collects from the advertiser for the space which we run.
- Q. That leads then to this question: How does the pay for advertising come to you?
- A. The advertising is ordered from us by the foreign agent, the foreign advertiser. We bill the agency for the space named, the amount of space that is run, and the amount of money owing to us.
- Q. Then what happens?
- A. Then if the bill is paid -- if we receive our money by a certain date, we allow a discount, a cash discount. This cash discount is allowed to the advertising agent in order that he might allow it to the advertiser, in order that the advertiser's money will be in the agent's hands in time to pay us by our discount day.
- Q. The Court will probably be interested, Mr. Braucher, to know to what extent this method of collecting the pay for advertising has, in fact, been successful. To what extent have the magazines that you operate had losses?
- A. Well, in the last five years our loss has mounted to two hundredths of one per cent. I think \$19,000 upon about a volume of sixty-five million.

Chapter VII

AN ANALYSIS OF THE ADVERTISING AGENCY COMPENSATION PROBLEM

Three observations stand out as unmistakable in the preceding chapters of this study: First, that advertisers have a vital need for the services that many advertising agencies are equipped to render; second, that they are availing themselves of agency facilities to a constantly decreasing extent; and third, that the greatest bar to a full use of agency service by advertisers seems to lie in the method by which advertisers are supposed to pay agencies. Clearly, a situation has developed which tends to jeopardize the advertising agency as an institution, and which, unless corrected, will encourage advertisers to find alternate sources of advertising service or to develop their own facilities for performing these services.

The starting point of any analysis of this three-fold difficulty must be the assumption that advertiser, agent, and publisher are mutually and reciprocally dependent.

Fundamentally, the advertiser is interested in marketing his product -- and in marketing it as extensively and as cheaply as he can. He wants to secure the greatest possible hold on his market with the smallest possible expenditure. He uses advertising as one of the means of facilitating his marketing. And because advertising has been found effective as one of the steps in the marketing process, the advertiser (particularly when in competition with other manufacturers who advertise) has to depend on publishers and on proprietors of other mediums. They constitute his contact with the individuals who make up his market.

Moreover, each publisher and radio station operator, as well as operators of car card facilities, outdoor posters, etc., has a monopoly of contact with certain groups of buyers. Because of editorial content, particular location, or particular timing, each can offer the advertiser contact with customers -- often by class groups, and in numbers ranging from small, highly selected classes, to many millions of unselected purchasers. If the advertiser would reach these people, he has no choice but to rely on the publisher.

The advertiser is just as important to the publisher. Typically, publications are operated for profit -- a profit, incidentally, that depends chiefly on advertising revenues. But the way of securing these revenues is by offering a particular type of audience to the advertiser for advertising. Fundamentally, then, the publisher must rely on editorial content (or, in the case of other mediums such as outdoor posters or car cards, its equivalent in location or mechanical facilities) to secure circulation to attract advertising. His function is to supply groups of individuals of varying degrees of homogeneity with amusement or instruction. A publisher who does not perform this function soon loses circulation so rapidly as to be of no interest to advertisers. With the development of advertising, the publisher has had a by-product to sell. Since advertising space is produced under joint cost with the editorial pages of each publication,¹ there has been no ascertainable total cost to the publisher on which to base prices for advertising space, so that the publisher has been forced to set rates with one eye on what the traffic will bear, and with the other on what his own competitors are charging.

There is, moreover, a large number of mediums and the advertiser must find the most economical method of selecting those mediums which are best suited to his needs. Obviously, by cooperating with others desiring the same service, the individual advertiser can enjoy the benefits accruing from a single overhead burden. The advertising agency offers this very economy, for it is "a cooperative organization created to serve more than one advertiser." It can, therefore, select mediums and place advertisements for a number of advertisers more cheaply than can individual advertisers for themselves. This, then, is the primary function of the advertising agency and a valid justification for its existence.

It is evident that these three -- advertiser, publisher, and agent -- have interests in common, and that the welfare of publisher and agent is directly dependent on the advertiser's success in using advertising. What harms the advertiser must, inevitably, injure the other two.

¹ In the case of car cards, outdoor posters, and other standardized mediums, franchises, leases, etc., supply the necessary element which prevents rates from being affected only by costs.

It is the rigidity -- the hard-and-fastness -- of the discount system, with its rate set according to 1918 agency costs, which restricts the present-day agency in its usefulness to its clients. And it is the organized endeavor to make adherence to this minimum price-fixing device a matter of ethics which is forcing advertisers to find or to develop facilities to do what agencies should be qualified and eager to do.

Since the days of space brokerage advertising has extended its ramifications and increased its "tools" many times. Car cards, lighted posters, and radio, for example, have come into existence since those days. It should seem obvious that a basis of compensation which might have served the purpose for the space brokerage of yesteryear could hardly be expected to be adequate for today's broader and more highly complex field, comprising so many subsequently developed mediums.

Not only has the field of advertising developed beyond the horizons of even the most far-seeing of its early pioneers, but the needs of advertisers have themselves likewise developed and changed most spectacularly.

The sharpness with which competition is focused on the marketing process makes it necessary for present-day manufacturers to increase the efficiency of every phase of their sales programs, and to see that there is complete coordination of the whole. Moreover, the different situations that manufacturers have to face prevents any standardized treatment. The key-log to the distribution jam for one manufacturer may be dealer neglect, for another may be substitution, and for another may be servicing the product after it reaches the hands of the consumer.

There is no longer a standard marketing pattern for products going to the same market. Each manufacturer has an individual problem -- a problem to be solved by a successful combination of his particular sales factors. The manufacturer needs some competent functionary upon whom he can rely for advice, and whose advice will not be influenced by such questions as relative amounts of money to be obtained according to mediums used. He needs a marketing counselor who can and will -- after an honest and thorough analysis of the individual situation -- place greatest stress on the medium of greatest value to the advertiser.

These greater and more fundamental responsibilities the agency, considered by and large, appears not to have undertaken. Agencies which do render a complete and comprehensive service to clients, conducting market surveys, trade and consumer investigations and measuring advertising effectiveness and the like, are not the rule when the agency field is considered in its entirety.

It would appear that such efforts are not widespread in the entire field only because of fear on the part of many agents that they will not be paid adequately for thorough and comprehensive service. This fear arises from their inability to discover how they can apply the discount system to each and every situation. As a specific example consider the agent's action with respect to radio talent. When it became evident that radio advertising meant showmanship it also became evident that the quality of talent employed was of paramount importance. Searching for and training talent in many cases is no easy job. Agents naturally wanted to be compensated for such work. A percentage arrangement -- 15 per cent on the cost -- was the first idea. But this idea had its difficulties. It put the agent in the highly difficult position of being a negotiator whose own income for serving as a negotiator increased as the price of talent increased. An unethical practice of two prices -- a secret one between talent and agent and another one between agent and advertiser -- arose in some quarters. In an endeavor to remove or appear to remove the agent from the position of price negotiator on talent and to appear to put the discount system into full effect, some one conceived the idea of having all talent purchased through radio stations, and radio stations only with a net price for agents and a gross price to advertisers. The plan didn't work. The show business with its managers and agents of talent had been too long established to allow a newcomer to come between it and its ultimate market -- the advertiser and his advertising agent. Furthermore, advertisers, through the Association of National Advertisers, opposed it.¹ Today, as indicated in Chapter VI, advertisers are working

¹ A resolution unanimously passed by the Association of National Advertisers at a meeting held on April 29, 1931, reads:

"Whereas, certain groups of advertising agents and radio interests have expressed the opinion that purveyors of radio talent should sell talent at a price which would automatically include 15 per cent commission for advertising agents -- which commission would be in addition to the commission of 15 per cent allowed by broadcasting stations to advertising agents for the time purchased, and (continued on next page)

out payment arrangements with agents, for talent work, that are mutually satisfactory to agent and advertisers.

This interesting example of an unsuccessful endeavor to fasten the discount system on a new accessory in advertising -- radio talent -- shows that the agency -- when acting for its own group -- is restricted in its thinking of compensation to one system with its 1918 percentage rate. Such restriction on thinking with respect to compensation, it would seem, has restricted the agency's opportunity to thoroughly broaden its work for the general run of its clients.

Before the agency can afford to broaden its services to meet the growing needs of an advertiser, that advertiser must advertise heavily in discount mediums, unless the advertiser and the agent can work out some mutually satisfactory method of separate payment. Were it the ordinary and usual thing to work out such modifications of compensation plans, there would be little or no difficulty -- unless it be argued that the American advertiser is a species of human being who will not pay for value received. But when such arrangements are in violation of an ethical code -- however fictitious -- they are likely to be enjoyed by only a limited number of insistent and venturesome advertisers.

What the advertiser must have is the opportunity to allow him, in an ordinary and natural way, to buy as much advertising agency service as his account requires, and to pay for it on a basis that will insure the best. But in its nominal rigidity the discount system fails to provide this equilibrium between service needs and payment: No one has any assurance that an agency will be adequately compensated, over-compensated, or under-compensated by the discounts that accrue to it in handling a given account.

In the business world, the value of any service is likely to be related to its worth to the purchaser, or to its cost to the supplier. And it must be admitted that the use of a basis of compensation in no way related to either -- as is the case with respect to the service rendered by advertising agencies -- tends to prevent a wholesome adjustment.

Had the discount method not been nurtured to a state of hardness or inflexibility, it would be easy for any agency to make any arrangement with any client that would be mutually satisfactory. As it is, the influence of publishers, the weight of precedent, and fictitious "ethical" standards are in the way of change.

The case against a rigid basis, or system such as that ostensibly followed by agencies, is so convincing as to bring up the question of why it was cast into its iron mold in 1918, and why neither agents nor publishers have sought openly to modify it as conditions have subsequently changed. Probably the most plausible explanation is that the present arrangement is regarded as something of a defence alliance.

The publisher -- at least the publisher of a medium of large circulation and high rate -- may have cultivated his field beyond the point of diminishing returns and realizes that a sharp curtailment of advertising lineage would throw him into insolvency. And he knows that, so long as agents must rely on discounts, he will

"Whereas, it is the strong conviction of buyers of advertising that the question of compensation to advertising agents for the handling and purchasing of talent is a matter that should be decided between the advertiser and his agent, and not by the agent and purveyors of talent, be it

"Resolved, that the Association of National Advertisers hereby declares its opposition to a practice whereby a commission on talent is automatically allowed for advertising agencies."

¹ A recent study by the Association of National Advertisers called "Agency Service and Compensation on 62 Leading Radio Programs" shows, among other things:

"1. On the programs of 45 companies who reported on payment of a talent commission, 53% pay no talent commission, 42% pay a commission on all talent, and 5% pay a commission on part of their talent.

"2. The average number of services performed by the agency for the advertiser who pays a talent commission is 10, and for the advertiser who pays no commission, 6."

have a constant advocate -- often an advocate close to the confidence of the advertiser -- for mediums of the general class of his own. With such constant and often unobtrusive pressure exerted on the advertiser who buys his space, he feels that he will get his due share of what business there is. Without such supposed sales assistance, he may wonder if the contact with such market as is constituted by his readers is sufficiently valuable spontaneously to attract as large a number of advertisers.

On the other hand, the advertising agent -- who has built up his clientele not so much by having an expert knowledge of mediums, but by service, billed as part of space costs -- fears that advertisers will not be sufficiently enlightened to be willing to pay separately for agency services. So long accustomed to using advertising agency service "because it costs nothing," the advertiser -- the agent fears -- will be unwilling to appraise his services at as high a figure as is now found in the payment the advertiser makes for advertising space. Moreover, it may be possible that some agencies would not be able to meet the standards of selection that advertisers would insist upon were they to appraise advertising agency service as a separate item.

The reasons given for this support of the discount system -- though they may be rationalizations -- must be recognized. The attitude of those agents and publishers who are proponents of the discount system can be summed up thus:

The agency develops business for the publisher because he makes the advertising undertaken by the advertiser as effective as possible by using effective appeals and improving advertising technique. And, as a result of this greater efficiency of advertising, the advertiser continues and even increases the use of advertising as a method of sales promotion, thereby maintaining and increasing the publisher's volume. In addition to this, the agency is alleged to reduce the publisher's credit risk by means of guaranteeing the advertiser's account.

However, it has been pointed out in Chapter V that the advertiser is definitely responsible for the ultimate payment of his space or time bills, whether he has paid his agent or not in the meantime and the agent, therefore, has no credit responsibility to the publisher. The force of salesmen that publishers have built up, the sales pressure exerted on the advertiser by this sales force, and the complete system of special representatives and special agencies used by newspapers indicate clearly the fact that the general advertising agency's responsibility to the publisher is practically non-existent. Certainly, in the light of all the evidence presented, it is hardly necessary to iterate this fact.

Legal research has established that the agent is purely the agent of the advertiser. And let it be remembered that, in law, an agent is one charged with the performance of a service or task for the benefit of and on behalf of the principal or employer; though -- unless otherwise stipulated -- some discretionary power is allowed the agent he must act solely for the benefit of his principal. It is true, therefore, that the agency should make the advertising undertaken for the advertiser as effective as possible. But the agency does this because it is the agent of the advertiser. In spite, then, of the contention of various publishers and agents, it is this very responsibility for increasing the efficiency of the advertising that makes it impossible for the agency -- ethically and conscientiously -- to represent any medium or media.

In addition to the above, it has been shown in Chapter IV that actually the agent is paid by the advertiser in the form of a discount. The stand taken by those agents and publishers who wish to maintain the discount method of agency compensation is clearly, then, untenable.

In conjunction with this train of thought, it is interesting to notice that the recognition system -- the publisher's major weapon of offense in maintaining the present method of remuneration -- has been revealed as a perfunctory gesture. Mr. Young's statement¹ is significant:

"Thus it appears that, in practice, recognition becomes a matter of nomination of the agency applicant by the advertiser (through the act of giving the agency his business to place), with veto power on that nomination by the publisher. The use of this veto power is restrained to some extent by competition among publishers themselves. By and large, the nomination

¹Young, James W., *op. cit.*, page 12.

carries if the applicant can satisfy the publishers' credit requirements and if it presents no flagrant violation of the bona fides. Advertisers, not publishers, are originally responsible for selecting who shall be advertising agents. In particular, such standards of competency as are set are largely those which some advertiser has accepted."

The testimony given by Mr. Braucher, quoted on page 57, shows the interpretive latitude toward recognition by publishers. This attitude is corroborated by the testimony of Lincoln B. Palmer, General Manager of the American Newspaper Publishers Association, before the Federal Trade Commission¹:

"So far as the association (A.N.P.A.) is concerned, in practice at least, the question of recognition is no more than a credit rating."

Further, when asked, "If you know that an agent divides the 15 per cent commission with his client or principal, would you allow them on your list?" he replied "yes" and reiterated his view under further questioning.

In 1921, when the agency "system" was probably at its strongest point, the American Association of Advertising Agencies, in a memorandum to members, said:

"The only weak point in the agency system today that is of importance is the 'recognition' by publishers of men whose only claim for recognition is the fact that they have in some way secured a piece of business which they offer to the publisher with a request for differential."

In practice, then, it seems reasonable to conclude that publishers, who want to sell more space, will recognize those agencies who have business to offer them, and further, that they will be extremely reluctant to refuse recognition when such a refusal might mean the loss of business. Moreover, the pliant attitude of publishers -- who have had something to gain by enforcing the system -- suggests their realization of the proximity of the recognition system to restraint of trade. The recognition system, then, like much of the support given the discount system, is chiefly pressure by propaganda.

One of the more unfortunate aspects of the recognition system has been the implication that recognition constitutes a sort of certification of agency competency. By dissemination of this idea one more hindrance was put in the way of the advertiser's attempt to measure the adequacy of agency service; moreover, reputable and competent agencies have been forced to compete with incompetent agencies on an even footing because they both have the same easily acquired badge of respectability.

However, the emphasis heretofore placed on the deficiencies of agency service should not obscure the fact that the advertiser has not always been a shrewd or careful buyer of advertising or of advertising service. Because of the primary problems of production and selling, particularly during the formative period of the agency "system," when advertising was regarded as an optional adjunct to a more or less complete selling program, advertisers were not greatly concerned with the arrangements made by agents and publishers.

Too often, the heads of firms beginning to advertise, themselves unable or unwilling to oversee the details of advertising administration and to supervise the day-to-day and week-to-week contact with their agencies, have appointed advertising managers whose real function was to act as buffers between their executives and the routine of advertising. In other instances, although capable men were selected, they were given only nominal authority, and the close cooperation that should exist between agency and advertiser has been impossible because the advertising manager, as representative of the advertiser, has been unable to make decisions, and the head of the firm has not been in close enough touch with the situation to do so.

Regardless of the deficiencies of the advertiser, he is the buyer of both advertising space and of agency service. The publisher and the advertising agency are dependent upon him. That he is dissatisfied is unmistakably indicated by the information introduced in Chapter VI (both in returns of the questionnaire, and in the analysis of the information secured from the "Standard Advertising Register").

¹656 S. M. Official Report of Proceedings before the Federal Trade Commission, Docket No. 1251.

The evidence would indicate that the advertising agency is decreasing in importance despite an increase in the total number of advertisers. And the conclusion from such evidence is that only flexibility in the method of agency compensation will correct the situation thereby increasing the number of agency advertisers, reducing the turnover of agency accounts, and lessening the rate of advertiser-mortality.

If more elasticity in compensation arrangements were more freely permitted, owners of mediums with effective reader-appeal would, inevitably, be able to sell more advertising space at a lower cost of selling. Under a satisfactory basis of payment, agencies would be able to counsel an allocation of advertising appropriations that would be most efficient.

Advertisers themselves would benefit directly from a modification of the discount system. It would be possible for the advertiser, if the agency compensation arrangement were made flexible and reasonable, to purchase the specific services necessary in his marketing program. It would bring about more effective advertising because the agency would be interested in only one thing -- making the advertising of the client as profitable as possible. Only from such a step will all the factors in advertising -- the advertiser, the agent, and the publisher -- benefit.

Various advertisers, however, are afraid that publishers would sell only at present gross rates if the agency discount were withdrawn. This seems entirely unlikely. In the first place -- even under present conditions -- many discount mediums are selling direct to advertisers at net rates.¹ In the second place, it is evident that the agency discount was set by publishers at a percentage fixed by agents as an accommodation to agencies, not as a way of raising space rates. Publishers are in a competitive field, a field in which rates cannot long be maintained at artificially high levels. No widespread objection is raised to the Ayer system -- long in practice. Furthermore, publishers and agencies have set the cash discount given to the advertiser upon the net rate of publications and have thereby admitted that publishers' net rates are the effective rates. That publishers will sell only at present gross rates seems a needless and unnecessary worry.

It is clearly evident that there is nothing to prevent modification of the present outmoded method of agency remuneration.

However, having become convinced that he should, and can, break away from the discount method of agency payment, the advertiser is confronted with the problem of deciding what basis of compensation should be used in payment for the services performed for him by his agency. Of course, as has been stated before, the method chosen should depend upon the individual advertiser's needs and should vary as these needs vary.

From this study, it is possible to say that there are now in operation four basic plans of agency compensation, namely: (1) discount; (2) percentage; (3) fee; and (4) speculative. So that a picture of all these plans may be obtained at once and so that points of difference may be clearly understood, an explanation of each method follows:

(1) Discount: Under this method the agent's compensation is the difference between the net rate -- the rate he pays the medium -- and the gross rate -- the rate at which the advertiser is billed. Unless the difference between these two rates -- usually fifteen per cent -- remains constant, regardless of the volume of money expended in an advertising medium, the arrangement cannot be said to belong in the discount classification. It then very properly belongs in the percentage classification -- which is next to be discussed. However, before turning to that classification, it is in order to point out that no statement on the discount system is complete without an explanation of the fact that certain safeguards against inadequate income are sometimes thrown around the discount system by agents in agreement with their clients. Those safeguards are two: A guarantee that the agent will receive a definite income for his work even though discounts on space purchased by a particular client do not equal that sum. For example, an advertiser and an agent may agree that the agent's minimum income for a year for the handling of an account should be \$15,000.00. During the course of that year, should it become necessary for that advertiser to limit space expenditures to \$50,000.00, the agent would receive a total of only \$7,500.00 in the form of discounts. It would then become necessary for the advertiser to pay an additional \$7,500.00 as a fee to the agent. Such an arrangement, of course, is the beginning of a fee plan but cannot be fully counted as a fee plan. The usual minimum guarantee arrangement provides that the advertising agent is entitled to retain all

¹ See page 39.

discounts over and above his minimum guarantee. (Unless the agreement so specifies, an agent is not working under the discount system.) The other safeguard employed to protect advertising agents from loss is one which provides for a payment of a fee or stated amount to an agent over and above all discounts received by him. This arrangement is in reality a combination of the discount and fee plans but, for the sake of accuracy, should be labeled a fee, since both advertiser and agent have come to an agreement between themselves as to what the total cost for service on a particular account should be.

(2) Percentage: Under this plan the total volume placed in advertising mediums determines the amount of an agent's compensation. In this respect the plan is similar to the discount system, when that system is used without payments by advertisers over and above discounts received by agents. Under the percentage plan the rate is determined by the advertiser alone; the agent alone or the advertiser and agent jointly. It cannot be said to be determined by an advertising medium. The percentage plan also differs from the discount system in that either the net rate or the gross rate may be used as a base.

In some cases, the arrangement may call for a percentage which is identical for any and all mediums. For example, the advertising agent may receive 10 per cent on the gross rate of any mediums used -- whether it be magazines, newspapers, outdoor or radio. The percentage given in this example may be constant regardless of volume bought or it may decrease as volume increases.

The percentage plan may also be used on a basis which calls for a varying rate of percentage for each type of medium employed by the advertiser. For example, the same advertiser may allow an agent 17 per cent for radio advertising; 12 per cent for outdoor advertising and 10 per cent for magazine advertising.

When the percentage method is used, all discounts which an agent receives are usually credited to an advertiser's account. If the total amount credited to the advertiser is greater than the amount due the agent, the balance over and above that total is turned over to the advertiser.

When the percentage agreed to by an advertising agent calls for a total amount greater than the sum received in the form of discounts by the agent, additional cash payments are made to the agent by the advertiser.

(3) Fee: Some indication of the use of this plan has already been given. It isn't one which requires much explanation. It is obviously a lump sum of money determined by advertiser and agent. The size of that sum may be determined by the amount of time necessary in handling an account, which time is computed at an hourly rate that includes a profit for the agent. It may be arrived at by the addition of a sum representing profit to a figure representing the actual cost to the agency for the work involved. As was the case with the percentage plan, the total amount received by an agent in discounts is credited to the advertiser and cash adjustments are made upward or downward according to the total fee involved.

(4) Speculative: The speculative plan is an attempt to relate the payment of agency services directly to the results received from those services. Payment may be based on: (a) sales of the advertiser, either total sales of all products or sales of the particular product or products advertised; or (b) profits of the company either on all products or on the individual product advertised. The total amount paid would usually represent a percentage -- sliding or constant -- of either of these two bases. In some instances part ownership of the business advertised may be the agent's return. In such cases the agent, in addition to supplying service, usually defrays all or part of the actual cost of advertising space or material used.

In setting forth the four basic plans of agency compensation, no concern has been shown with respect to the payments made to agents for material or services which they purchase for the advertiser, such as art work, engravings, electrotypes, and radio talent. Many different plans are used for compensating agents for such services as has been indicated in Chapter VI.

Among them are:

- A constant percentage on the net or gross cost of materials or services purchased
- A variable percentage on net or gross cost of materials or services depending, for instance, upon the volume of advertising placed in mediums

A fee basis having no relation to amount spent or quantity purchased.

It should be said that there are some agencies which make no charge for the work they do in purchasing materials or services. It should also be pointed out that there are instances when the advertiser is not even charged for the cost of materials.

Arrangements for compensating agents for the purchase of materials or services are not always identical with the arrangements by which any given advertiser compensates his agent for the purchase of space. The advertiser may, for example, compensate his agent for the purchase of space by the discount arrangement and at the same time use a fee basis to compensate for his work in the purchasing of materials or services. It is obvious that any number of combinations are possible with respect to compensation plans for the purchase of space and for the purchase of materials and services.

Before leaving this subject of basic methods of agency compensation, some comment on "house agencies" is in order. This is so because the "house agency," previously described in Chapter IV as an agency owned, in whole or in part, by one or more advertisers, has been erroneously assumed to represent a method of payment. A house agency may be as "ethical" as any other agency in its method of charging for its service. That is to say, it may operate at all times under a strict interpretation of the discount system. If it does not operate under that system, then it can only operate under one of the other three basic plans of compensation. Close analysis will show that what the house agency does with its excess income, after all expenses of operation are paid, does not change the fact that such an agency is paid for the work it does and that the plan of payment must fall into one of four basic classifications of agency compensation.

It should be clearly evident, then, from the analysis of the discount system, as given in this chapter, that not only is modification desirable, but the system is being modified and has been modified in a sufficient variety of ways to enable advertiser and agent, in any particular case, to pick a plan that can be adjusted to the needs of their own situation.

Chapter VIII

CONCLUSIONS

What specific conclusions may be drawn from the material presented in this study?

First: The conventional discount system tends to disguise the normal business relationships of the three parties at interest and prevents harmonious co-operation.

Second: It prevents the agent from adapting his services to the advertiser's needs and, in addition, handicaps the agent in the desirable development of the scope of his services.

Third: It forces advertisers to develop new sources of advertising service when economy of operation would indicate concentration of service in the agency.

Fourth: It makes it necessary for agents to maintain a fiction -- which is that the rate of discount is set by owners of mediums when in fact the rate is set by agents themselves.

Fifth: The system is in reality a price-fixing device and such a cumbersome one that it cannot readily adapt itself to fit current costs of doing business. (As evidence, the present standard rate of 15 per cent, which was set according to 1918 costs of doing business, has not been altered since that time although costs of doing business -- unless the agency business is altogether different from every other business -- have fluctuated widely.)

These conclusions plainly indicate that the discount system as the one and only system is outmoded. It no longer fits the time and should not be advocated as the one and only system of agency remuneration.

That the discount system no longer fits the times is amply supported by the fact that both advertisers and agents have modified it and in some cases have publicly abandoned it. Furthermore, they have done this without hindrance from third parties.

Since the discount system is inflexible and since present day needs require flexibility, any one who attempts to prescribe another inflexible cover-all system simply repeats the same mistake. Because it is so apparent that no one system will permit the normal development of harmonious cooperation between the three parties at interest, this study obviously could not recommend a cover-all system of agency compensation to supplant the present one.

What constructive course of action can be charted for those groups most vitally concerned -- the advertiser, the agent and the medium?

The only course of action is this: Each advertiser and agent should -- as they are amply entitled to do both in law and morals -- agree upon a basis of payment which suits the needs of a particular situation.

This outline of a course of action, in reality, is more than an outline! It is a statement of what is happening and will continue to happen as more and more advertisers come to understand their rights and duties with respect to advertising agency compensation. Furthermore, that development can and is taking place without overthrowing the discount system overnight. This being so, the real recommendation, then, is: (1) That advertising mediums, as a group, should assume the same understanding attitude toward this development as they do in their capacity as individuals; and (2) that advertising agents, as a group, likewise take the same understanding attitude toward it as they do in their thoughts and actions in their capacity as individuals.

This report, then, has offered a definite course of action, i.e., that the advertiser and agent make arrangements for agency compensation that are mutually agreeable to both, as they are fully entitled to do. Furthermore, it has been shown that such arrangements can be and are being made.

For the advertiser who desires to exercise the right to follow that course in a practical fashion there is included in this report, on Page 117, a workable form of contract for his guidance.

¹ See Chapter VI, page 34.

PART II

LEGAL PRINCIPLES

APPLIED TO ADVERTISER-AGENCY-MEDIUM RELATIONSHIPS

Chapter IX

RIGHTS AND DUTIES OF AGENT, ADVERTISER AND MEDIUM BASED ON STUDY OF DECIDED CASES

Introduction

As the advertisement has become a more widely used weapon in the stimulation of sales, differences of opinion have arisen among interested parties which have necessitated the intervention of the Courts in defining the rights and duties of the persons involved.

What is the legal status of the advertising agent? What are his duties to his client, the advertiser? What are his duties to mediums of advertising? Who pays the advertising agent, and why? How far can the agent go in binding his principal? Can the publisher look to the agent alone if the advertiser cannot or will not pay? Can a group of agents set terms and conditions for all agents? Can a group of publishers set terms and conditions for one agent or a group of agents? These and kindred questions are not abstract hypotheses, but they are of the daily diet of the advertising business, and most of these questions, in one form or another, have been before the Courts.

In order to seek out an answer to these questions, more than eight hundred cases dealing with advertising, directly or by implication, have been examined. (A list of those cases will be found in Chapter X.) The conclusions reached in the following pages represent an effort to interpret the decisions in those cases. The method employed is analytical, and not argumentative. Care has been exercised to limit findings to the specific questions before the Court, with a minimum of general reasoning. In Chapter XI will be found a form of contract for practical use.

It may be felt in some quarters that the conclusions reached are self-evident and elementary. With that view counsel will not seek to quarrel. Those who entertain that view, perhaps, would better understand the method employed if they were thoroughly cognizant of the mist of uncertainty and doubt which envelops a great industry seeking to find itself.

The author is deeply indebted to Messrs. Joseph C. Dinsmore, (of the Ohio bar), James F. Hoge, (of the New York bar), John J. Jackson, (of the Pennsylvania bar), C. B. Jarrett, (of the Pennsylvania bar), Kenford Nelson, (of the Wisconsin bar), W. H. Leahy, (of the Massachusetts bar), and Philip S. Rivlin, (of the New York bar), for their helpful and usable suggestions. All those named have concurred in the conclusions reached. There have been no dissenting opinions received.

Section 1.

Definitions of Advertising Terms

The commodity in which the advertiser deals is "advertising space." That word is used here to denote an aggregate of spaces available for an unlimited number of individual advertisements. An "advertisement" is defined by the dictionary as a "printed public notice, as in a newspaper." A series of advertisements, on one general theme, printed in behalf of one firm or corporation is usually referred to as an "advertising campaign." The printed notices advertised to in the dictionary definition are generally referred to in the trade as "advertising."

Advertising is a commodity which can be bought and sold much like any other form of merchandise.¹ Money invested in advertising is regarded as similar to money spent in machinery and fixtures.² The cost of advertising is a proper deduction from the profits listed in a suit for infringement of copyright. Receivers are permitted to spend money on advertising when operating temporarily insolvent corporations, and it is classed with upkeep or maintenance.

Thus is the nature of the commodity defined, and the rule laid down. Its implications are carried to a logical conclusion in yet another case³ where it was held that a trade mark, built up through advertising, is not only a valuable commodity but that the advertiser has a lawful monopoly in his trade mark and trade

¹People *ex rel.* Morse International Agency *vs.* Cantor, 119 Misc. N. Y. 355; 196 N.Y.Supp. 514. (1922)

²Hilson *vs.* Foster, 80 Fed. 896, 7. (1897)

³Great Atlantic & Pacific Tea Co. *vs.* Cream of Wheat, 224 Fed. 566. (1915)

name. In that case the manufacturer was attempting to protect the good-will of his product, "Cream of Wheat", a product composed of "middlings" which are a by-product from the milling of flour. The "middlings" were selected, cleaned and purified by the manufacturer, the style, dress, name and package of the Cream of Wheat Company had been successfully and extensively advertised for eighteen years, until the public had become accustomed to ask for and get something good to eat under the name "Cream of Wheat". In holding that the Cream of Wheat Company was entitled to protection for its product, the Court, in part, said: "An identical substance under another name, would have to travel the same long, hazardous and expensive path to get or create a market."

The vehicles, or mediums of expression, which carry advertisements, are too numerous to list in detail. While general attributes are common to all mediums, each appears to have its own especial use and application, and each serves effectively to bring the name and the product of the advertiser forcefully to the attention of the public.

In the course of the preparation of an advertisement, (before it reaches the notice of the ultimate consumer of the goods advertised), it is apt to pass through the hands of three sorts of persons, advertisers, advertising agencies, and publishers. The combined efforts of these three classes of persons has resulted in the present large capacity of the advertising business in the commercial world.

The cases appear not to reveal a legal definition of an advertiser. The dictionary calls him "one who makes known by public notice." This definition is somewhat too broad for our instant use, as this study will deal principally with the problems of those manufacturers and agencies who place their advertisements in the usual advertising mediums. The advertiser, in brief, is the purchaser of the advertising space, the one for whose benefit the advertisements are prepared and published.

Publishers maintain what is known as a "card rate." A description of that term is found in the case of *Kastor vs. Elders*,¹ from which the following is quoted:

"... it appears that weekly and monthly magazines and daily and weekly newspapers have fixed charges or rates for advertising. The rates are quoted from time to time by the publications, and constitute what is termed the card rate. They are based on the amount of space used and the position given the advertisement in the columns of the publication. These rates are subject to change from time to time by the publications, but all advertisers are charged alike, no rebates or favors being shown by any particular advertiser, so that any advertiser may deal direct with the publications, in which case he is charged one uniform rate of the particular publication, for the kind and character of the advertisement inserted, or what is termed the card rate."

If an advertiser for any reason does not wish to use all the space in a publication in which he has contracted to display, the publisher may charge an increased rate if the advertiser pays the "short rate" for the space which has already been used. The "short rate" was defined in *Hampton vs. Schlesinger*,² as follows: "A short rate is an increased rate for the space actually used, and is to be paid in case of failure to use the whole space contracted for."

The difference between the "card rate" and the "net rate," in a commissionable medium of advertising, is known as the agency "commission" or "differential" or "discount". In *Kastor vs. Elders*, cited above, the agency rate "is allowed by the publication with the expectation (and it is required by a few publications) that the agent or agency retain as his or its commissions, the difference between the card rate and the rate charged the agent."

In the same case, by inference, the Court adverted to what is sometimes referred to as a "rebate" in the following words: "It appears that the agent sometimes gives his advertising patrons the benefit of part of the agent's commission, but this is a matter of contract in each instance, and is determined by the nature

of the account, the kind and extent of service required of the agent, competition, etc."

The circulation of a publication is described in another case as the "number of copies of each issue of the publication, which shall be published and sold and delivered by the publishers thereof, both to paid subscribers and to news agencies, and copies given away in any manner whatsoever.... In ascertaining the paid subscription list, all those subscribers would be counted who had paid once, and to whom the magazine was being sent, although the subscription had not been paid for years."³

Section 2.

The Advertising Agent in Legal History

With some degree of accuracy, the historical development of the advertising agency may be traced through decided cases. The most famous of the early decisions is that of *Clegg vs. Newspaper Union*, decided in 1876.² The date is significant.

For some years prior to 1876, the plaintiff was engaged, in the City of New York, in securing from persons, firms and corporations, advertisements to be published in newspapers. He was described as an advertising agent, though the facts before the Court showed him to be neither the agent of the advertiser nor of the publisher. He made agreements with those who wished to secure the publication of advertisements in certain newspapers for certain sums, and contracted with those papers to publish advertisements at the rate agreed upon. The difference between the rate paid by him to the newspaper and the rate which he received from the newspaper was his profit. The plaintiff bought space independently, in most cases before he had secured a commitment from his advertiser clients to use the space.

"Under this contract," (i.e., the contract with the publisher defining the rights and liabilities of the parties), "plaintiff was entitled to occupy a definite space, which was a 'space contract'," said the Court. A second contract with the publisher was found to be necessary in maintaining this arrangement, which contained the following passage: "If I (Clegg) have not used up all of said space prior to April 1, 1877, then I am to be allowed to continue inserting advertisements until the space is all used; and should I require any additional space on orders taken before April 1st next, I am to have said extra space at 25 per cent of gross rates, by paying cash with each order." The defendant admitted that he undertook to publish advertisements for the plaintiff under the contract, but denied that they were on the terms set up in the complaint. It was alleged by the Newspaper Union that it was a custom "that the plaintiff (Clegg) and all others engaged in the same business should not give their customers less rates than those prescribed in a schedule furnished by the defendants. Plaintiff (Clegg) insisted that there was no such rule, and also that if one existed, it was not applicable to space contracts, but only to advertisements published on commission." (Parenthetical matter ours.)

Thus is seen the beginning of an effort on the part of a publisher to claim a right to a voice in fixing the price at which his advertising space is to be sold.

The practice of purchasing space in bulk, to be sold at a rate independently of the publisher's wishes in the matter, was in existence in some quarters as late as 1902. In the case of *Hampton vs. Schlesinger*,³ the agency was held to be independent in his contractual relations with the advertiser. In October of that year the agency and the advertiser made a verbal contract under which the agency was to buy advertising space, and sell it to the advertiser, and furthermore to take entire charge of the advertiser's advertising.

It appeared that, in order to carry out the arrangement with the advertiser, the agency had contracted for space under a quantity discount at a reduced rate. The agreement was rescinded by the advertiser at a later date, before the entire space was used. The agent then had to pay the full line rate, the quantity discount being disallowed, which rate was an appreciable sum more than he would have had to pay for a like amount of advertising space had the entire contract been

¹ 170 Mo. App. 490; 156 S.W. 737. (1913)

² 50 Misc. N.Y. 539; 99 N.Y. Supp. 522. (1906)

¹ *Cream of Wheat vs. Crist*, 166 App. Div. 870; 152 N. Y. Supp. 407. (1915)

² 25 N. Y. Supp. 566; 72 Hun. 395.

³ 99 N. Y. Supp. 522; 50 N. Y. Misc. 539.

fulfilled. He sued the advertiser for that difference as well as for commissions thereon. The Court held that the advertiser was in no way to be considered a party to the contract, and therefore was not liable for the difference between the full line rate and the reduced rate. In short, he had no concern in the price paid by the agent for the space.

Vestiges of this practice are found as late as the year 1922. In that year the Morse International Agency¹ brought suit for reclassification of taxes. In describing the business of that agency the Court had the following to say:

"The record fails to disclose that the relator (the agency) at any time sold outright the advertising space for which it contracted with the various publishers. An examination of the record discloses the fact that at no time did the relator part with its title to the advertising space. It appears to have reserved at all times its absolute control over the space and when it received a contract from its clients, through which space could be used, it merely transmitted to the publisher the advertisement and designated the space the advertisement was to fill." (Parenthetical matter ours.)

There are pioneers in modifying agency practice who appear upon the scene long before the business generally had evolved a uniform course of action. Such a pioneer was Allen, who went to Court in the case of *Allen vs. Pierpont*.² The facts of record indicate that not only did he act as space broker, but also, to a degree, as an advertising agent in the modern sense. The date of the case was the year 1884.

It appears that Allen went to the advertiser and offered him a plan under which Pierpont, the advertiser, would buy advertising space from the publisher and pay for that space partly in cash and partly in due-bills.³ The advertisements were inserted, but none of the due-bills was presented for collection, and the manufacturer who desired to sell his machines, concurrently with the purchase of his advertising was sued, and then found that the agency had owned the space before filling it with the advertising matter which the manufacturer had paid for. This conduct by the agency was not what the manufacturer had bargained for, so no payment was required. The Court commented upon the defendant's answer, by saying, *inter alia*:

"The defendant (Pierpont) avers that if the plaintiff did procure the insertion of the said advertisements in any of said papers, or did procure the execution of any of said contracts, that the publishers of said papers were induced to execute said contracts and insert said advertisements, not by reason of the undertaking of the defendant to furnish to said publications said three cutting machines for the price of \$16 each... but solely by reason of an especial pecuniary or other valuable consideration directly paid or promised to said publishers by the plaintiffs, and in many instances the plaintiffs had previously bought the advertising space in which the advertisements in question were to appear, or otherwise owned or controlled such space, and in such instances the plaintiffs simply directed the proprietors of such papers to insert in such space the advertisements in question, and the furnishing to said proprietors of such newspapers, the due-bill in question was no inducement whatever to the insertion of the advertisements in the newspapers." (Parenthetical matter ours.)

The Court held that "the plaintiffs are brokers, and as agents for the defendant undertook to perform for him the service specified in said contract, and thereby to obtain for him the benefits which would naturally result from the honest and fair fulfillment of their agreement." Continuing, the Court said: "They went through the appearance of doing what they undertook to do, and now ask

¹196 N. Y. Supp. 514; 119 N. Y. Misc. 355.

²22 Fed. 582. (1884)

³The due-bill here was a right granted by the manufacturer to the publisher to buy merchandise at a reduced price; the value of the due-bill was the difference between the list price and the purchase price under the bill.

for full compensation as if the pretense were equivalent to the reality."

Thus it would appear that as early as 1884, some advertisers who sold their wares over a large area had begun to require skilled advice and personal attention from dealers in advertising space. In the case of *Allen vs. Pierpont*, the space broker undertook to meet this demand, not only in the purchase of the space, but as a sales assistant. The Court held him to be the agent of the advertiser.

If the apparent dearth of Court cases is indicative of a business fact, it is, that there are few if any independent space brokers now doing business. They have fallen away, and given place to agents who represent advertisers or agents who represent publishers.

The case of *Hewitt and Hosier vs. Norman Lichty*,¹ is, in many ways, comparable with the foregoing case. The Court held the agency to be the agent of the advertiser, and because he made a special agreement with the publisher, which was contrary to the best interests of the advertiser, he was adjudged to have violated his agreement of agency, and was not allowed to recover commissions under his contract. *Allen vs. Pierpont* differs from *Hewitt and Hosier vs. Norman Lichty* in that, in the latter case, the advertising agency apparently had no control over the space before the advertiser had given the order for the space.

Still further development of the functions of the advertising agent in the direction of his present day status is revealed in the case of *Rosenbaum vs. Sarasohn*.² Therein, the agent represented both parties, rendering a separate service to each, and taking a commission from each. The agent stated that he had been authorized by the Home Guardian Company to develop a plan with the Jewish Daily News to dispose of some real estate owned by the Home Guardian Company. The "deal" was described by the Court as follows:

"Thereupon plaintiff (Rosenbaum) outlined his proposition which in brief was that the Home Guardian Company was to deed to the defendants (the Jewish Daily News and Sarasohn) as trustees, the Asbury Park property, which had been cut up into lots.... These lots were to be advertised by the defendants in said newspaper for sale; the cost to the advertiser to be at regular publication rates... and for every lot so sold, \$2.65 worth of advertising was to be inserted and paid for out of the collections." (Parenthetical matter ours.)

The contract provided that the publisher was to pay commissions to the agent on the advertising so procured. The agent furnished the copy, and performed the usual duties of an advertising agent in the preparation of the advertisements. The plan succeeded and the lots were sold. Subsequently the Jewish Daily News learned that the Home Guardian Company regarded the agency, Rosenbaum, as its agent, and was paying him a commission of \$1.00 for every lot so sold. It then refused to pay him any further commissions upon the space used, the sale of which had been brought about through Rosenbaum.

The Court held that Rosenbaum was the agent of the Home Guardian Company, but that Rosenbaum was entitled to commissions from the defendant on the advertising space because he rendered a service to the Jewish Daily News separate and distinct from that rendered to the Home Guardian Company, and also because the publisher placed no especial confidence and trust in him. Rosenbaum and Sarasohn were, in legal contemplation, strangers to each other, parties of adverse interest. The Court stated: "The services were not identical for in addition to plaintiff's negotiating the contract for the parties as an advertising broker, the plaintiff performed other services for the Home Guardian Company."

We now come to a consideration of the modern advertising agent, as he does business today.

In the case of *Kastor vs. Elders*,³ the Court described the advertising agent in suit as follows:

"The evidence shows that in the growth and development of the advertisement business to its present large proportions there

¹147 Iowa 270; 126 N.W. 170. (1910)

²*Rosenbaum vs. Sarasohn*, 121 N. Y. Supp. 629; 184 App. Div. 204.

³156 S.W. 737; 170 Mo. App. 490. (1913)

has come to be what may be termed a middleman or go-between, known as an advertising agent or agency. This man, or agency, deals with the advertiser on one hand, advising and assisting him in the selection of publications to be used and having put in type and preparing advertising matter or copy; making or having made drawings, electrotypes, stereotypes; preparing letters, circulars, pamphlets and literature generally for circulation through the mails, and otherwise; and generally conducting what is termed as an advertising campaign -- while on the other hand, the agent deals with the publications used, placing all orders for advertisements, and adjusting all charges and settlements with them, and paying all amounts due them. In fact, in such cases the publication deals with the agent only. The agent orders the space; the same is charged to him by the publication at the card rate, less the agency commission or the agency rate, and he pays therefor, and the advertiser has no dealings with the publication whatever. In such cases however, the charge to the agent for the space used is lower than the card rate, by from 5 to 15 per cent, each publication fixing its own rate or charge. This is what is variously designated in the testimony as the 'agency rate,' the 'lowest rate,' the 'rate with commission deducted,' etc. It is given uniformly to all agencies or agents recognized by the publications as trustworthy and to whom the publishers are willing to extend credit. It is allowed by a publication with the expectation (and it is required by a few publications) that the agent or agency retain as his or its commission, the difference between the card rate and the rate charged the agent. It appears that the agent sometimes gives his advertising patrons the benefit of part of the agent's commission, but this is a matter of contract in each instance, and is determined by the nature of the account, the kind and extent of service required of the agent, competition, etc....

"Plaintiff, (Kastor, -- an advertising agency)¹ prepared the copy for the advertisements, had electrotypes made, suggested the publications to be used, and (when approved by the defendant) placed all orders, checked the publications themselves with orders to see if the advertisements in fact appeared, and paid the publications, at the card rate less the agent's commission. In addition, the plaintiff wrote and re-wrote the literature used by the defendant consisting of letters, pamphlets, etc." (Underscoring ours.)

In the case of *Dolman vs. U. S. Rubber Co.*² the function of the advertising agency before the Court was described as follows:

"As to a newspaper, an advertising agency undertakes to solicit and finally prepare for insertion advertising matter and to collect therefor, and to pay the newspaper. In turn, the newspaper gives to the agency liberal discounts of the payments which are made promptly. As to the advertiser, the agency undertakes to inform itself of his wants and needs and express them in the most effective form for insertion in a newspaper, to select the space in a newspaper where the advertisement is to be inserted, to obtain the most efficient and economical space, and make all arrangements therefor. On all these matters, it undertakes to be informed as fully as the proprietors of the newspapers. Both as to the newspaper and as to the advertiser it undertakes to do perfect work. In the interest of the newspaper and also in the interest of the advertiser, it undertakes to make payments promptly, obtain discounts, for prompt payments, and give the advertiser the benefit of the cheapest service possible." (Underscoring ours.)

¹ Parenthetical matter ours.

² 109 Cal. App. 353; 288 Pac. 131. (1930)

In the case of *O'Shaughnessy vs. Shaw*,¹ the Court described the activities of the agency as follows:

"The plaintiff entered into contracts with the publishers of various newspapers and other periodicals throughout the country for the insertions of advertisements approved by the defendants, and caused the insertion of all such advertisements as have been heretofore required, and entered upon the performance of such other services as were required by said agreement." (Underscoring ours.)

While in this case the agent did not recover, the language of the Court is descriptive of the customary mode of doing business of a modern advertising agent.

In the very well-known case of *N. W. Ayer vs. U. S. Rubber Co.*, decided by the Supreme Court of Pennsylvania in 1925,² the Court held that it was the duty of the Ayer agency "not only to place advertising, but also to prepare and supervise the copy and submit the same to the defendant (the U. S. Rubber Company) for approval;... to send copy to the publishers and keep check upon publications to see that they were in accordance with the contract, and properly inserted in the publication; claim rebates for failure to insert advertisements, and to check up and pay bills and rebill them to the defendant and keep proper accounts." (Parenthetical matter ours.)

One further case, involving modern agency practice, will be cited, that of *Kaden vs. Moon*,³ where the Court, in part said:

"There was further testimony that the several advertisements which had appeared in the Cleveland papers had been prepared by the D'Arcy Advertising Agency of St. Louis;... that in each instance the advertisement was submitted to the defendant for its approval; and that the advertising agency made the necessary arrangements for the insertion of the advertisements in the papers and paid the papers therefor, and in turn billed defendant for the cost of the entire advertisement including the portion which had not been prepared." (A dealer's imprint.)

From these few cases, chosen from among those where the business conduct of advertising agencies has been before the Courts, the evolution of a system may be traced in rough outline.

There have been instances where, after an agent had bought advertising space upon a firm contract, the advertiser has elected to have another agent serve him. No cases have been found where a publisher has denied the right to an advertiser to effect a transfer of his account from one agent to another.

Some agencies have challenged the right of an advertiser to change agencies and transfer space contracts without paying the agency the equivalent of the commission or discount which he would have received had the contract been placed through him. The best known case on this point is that of *N. W. Ayer vs. U. S. Rubber Company*.⁴ In that case the Court held:

"Plaintiff's (N. W. Ayer's) claim for compensation is based on full commissions for advertising procured or inserted by them previous to January 1, 1920. They aver that to secure space in the various periodicals, it was necessary to procure the reservations many months in advance of the actual date of publication.... That during the Fall of 1919, the publishers contemplated an increase in charges for advertising in the near future, and in order to avoid paying such increase, it became necessary to place the advertising before the change in rates was agreed upon; that subsequent to the notice of

¹ 201 N. Y. Supp. 472; 206 App. Div. 458. (1923)

² 282 Pa. 404; 128 Atl. 103.

³ 26 S.W. (2nd) 812. (1930)

⁴ Underscoring ours.

⁵ 282 Pa. 404; 128 Atl. 103. (1925)

December 15th (a note of dismissal of the agency, pending the appointment of another agency) defendant (U. S. Rubber Co.) accepted the benefit of such contracts and reservations, and in view of the fact that the advertising was placed and the work required of plaintiff under their contract necessarily performed previous to its cancellation, plaintiffs were entitled to full commissions thereon. While there were other services plaintiffs (N. W. Ayer Co.) would have performed had the contract remained in force, there is also evidence that had plaintiffs continued with the work during the year, their services would have resulted in additional cost to the defendant, for which plaintiffs would have been entitled to additional compensation.... The jury returned a verdict for the full amount of plaintiff's claim. The judgment is affirmed." (Parenthetical matter ours.)

Two things of interest appear from this case: (1) the agent considered himself to be the agent of the advertiser, and (2) the agent sued the advertiser for his commissions or discount, rather than the publisher.

Huber Hoge *vs.* Smith and Wesson¹ is a case in which the relations between advertiser and agency were not clearly defined at the outset. It appeared at the trial that the agency had laid out an advertising campaign, and sought to recover commissions from the advertiser for the dollar amount involved in the rest of the advertising schedule, after a different agency had been appointed.

The Court held that the agency had been properly notified of its discharge from service, and that it had had time to clear up all of its outstanding obligations. It had cancelled all contracts with publishers, and had been paid for all work actually done. Therefore, the agency had no further claim.

This case is distinguished from *N. W. Ayer vs. U. S. Rubber Co.*, *supra*, in that the advertiser did not complete the contract with the publisher, which the agency had made in its behalf, but, on the other hand, it affirmatively appears that the agency procured the cancellation of the space reservations.

We have the recent case in New York of *Dorrance Sullivan vs. Bright Star Battery*² where a contract containing the following provision was before the Court:

"We desire to do our advertising through you, and this letter is to employ you as our advertising agents and merchandising advisers. We authorize you to plan, prepare and place our advertising in accordance with our approval on the following basis...." (Underscoring ours.)

No time limit appeared for the duration of the contract. It was, therefore, terminable at will, on notice. It appeared on the hearing that the advertiser under the contract, employed the agency exclusively to do all its advertising, which employment continued for about a year and a half. Then the advertiser notified the agency, pursuant to a cancellation clause in the contract, that it elected to cancel the contract as of ninety days later. Immediately after giving the notice, the advertiser employed other agencies, and the commissions on advertising placed in the ninety days amounted to about \$3,100. The agency sued the advertiser for these commissions. In an opinion of the Appellate Division of the Supreme Court of New York, the agency was denied recovery, because the contract lacked mutuality and did not bind either or both to any definite obligation. The Court of Appeals, however in a *per curiam* decision, reversed the Appellate Division, and held that the letter of employment to the agent gave the agent the exclusive right to place the manufacturer's advertising until the effective date of cancellation.

Thus, we see the advertising agency emerging from the role of space broker, independent and free, to become the business adviser and agent of the advertiser, who has no responsibility to the publisher, but who has the duty of skillfully executing the advertiser's wishes.

¹ 32 Fed. (2nd) 699. (1929)

² 227 N. Y. Supp. 675 - R - 249 N. Y. 593; 164 N.E. 596. (1928)

Section 3.

The Legal Status Of The Advertising Agency

An examination of the cases having to do with the classification of advertising agencies under the tax laws has been fruitful of results, in clarifying the legal status of the advertising agent. A leading case is that of *Fuller & Smith vs. Routzahn*,¹ a Federal Income Tax Appeal, from which the following language is taken:

"These important stockholders (in the Fuller & Smith agency) were regularly and actively and continuously engaged in the conduct of its affairs. This was their regular and principal employment....

"It is contended that the plaintiff's (the agency's) capital was a material income producing factor. In support of this contention, it is urged that the plaintiff had a substantial capital, greater than was normally required in its business; that as a result of the presence of such capital, it had a good credit rating; that it used some part thereof in procuring art work for its clients; and also that it bound itself to publishers for its clients' advertising bills, and used at times its capital in paying those bills...." (Parenthetical matter ours.)

In finding that the agency did not buy and sell and otherwise trade in advertising space, the Court held:

"Plaintiff did not contract for advertising space on its own account.... It merely reserved advertising space for specific clients.... The plaintiff's income consisted in the commission or differential between the publisher's card rate paid by its clients, and the amount paid over by the plaintiff to the publisher. Its other source of income consisted of the retainer fee paid by its clients.

"If in point of fact the plaintiff so conducted its business so that it did not need or use capital, the fact that it was theoretically liable becomes immaterial. It is further said that the plaintiff's capital gave it a financial standing and entitled it to a commercial rating.... Clients sought plaintiff's services because of that professional standing.... Plaintiff's income otherwise than from its retainer fee and commissions on advertising space placed with the publishers is so insignificant as to be immaterial." (Underscoring ours.)

The agency was granted classification as a personal service corporation.

In another Federal Income Tax case, *H. K. McCann vs. the Commissioner of Internal Revenue*,² the Board of Tax Appeals held:

"The evidence establishes that what the advertisers sought was the expert advertising service and marketing counsel of the petitioner's stockholders account executives. The number of clients was so small and the amount expended by each was so substantial that it was possible to give their personal attention to the problems of these advertisers." (Parenthetical matter and underscoring ours.)

This agency was also given a personal service classification. The agencies which were parties to the two proceedings just named were members of the American Association of Advertising Agencies, which organization had laid down general standards for the business conduct of its members.

¹ 23 Fed. (2nd) 959. (1927)

² Docket 6578, Board of Tax Appeals. 14 B.T.A. 234.

In the case of *Morse vs. Cantor*,¹ the agency, a space broker, sought exemption from a personal property tax, alleging that it was a mercantile corporation. The Court reached the following conclusions upon the facts:

"It is quite apparent from the testimony that the relator (the agency) did not buy and sell advertising space outright, but retained control over it at all times, and charged a certain amount to its clients which might also include a profit on the advertising space already contracted for, and at the same time a fair and reasonable fee for services rendered to the client. Therefore, I am of the opinion that the relator has failed to show that it is a mercantile corporation within the provisions of the Tax Law." (Parenthetical matter and underscoring ours.)

Suit for a personal service classification was upheld in the case of *Potts-Turnbull vs. the U. S.*,² from which the following language is taken:

"In 1919 the plaintiff (the agency) filed for the year 1918 its tax return upon the basis of a personal service corporation... next it is established beyond doubt that the principal stockholders were continuously active in the business.... The defendant (the Government) admits that the plaintiff did not guarantee the account of its customers with the publisher and the advance payment made by the plaintiff served only to secure a cash discount from the publishers which was passed on by the plaintiff to the customer.... It is indeed difficult to perceive wherein the method produced income to any material extent." (Parenthetical matter ours.)

"The general practice of the petitioner was to pay bills to the publisher after receiving payment from the client. However, in some cases, the petitioner did pay publishers' amounts due from the client before the client paid the petitioner." (Underscoring ours.)

In the case of *McCann vs. Commissioner of Internal Revenue*, *supra*, the following descriptive and factual language appears in the decision of the Board of Tax Appeals:

"Petitioner (the agency) rendered services to advertisers, whom it designated as clients. This service varied according to the requirements of the particular case. After a basic plan for the campaign had been prepared and agreed upon, petitioner's services varied with the particular case and the media selected. The petitioner purchased no advertising space in bulk and no space for its own account except a small amount in a trade journal in which it inserted advertisements of its own business. Petitioner never ordered space for a client unless the client knew the cost and approved it. Petitioner's relationship with a client was not to run for any fixed time, but was cancellable by either at will. Upon termination of the relationship between petitioner and client, unused space belonged to the client and was used by him with or without another agent. No client ever asked petitioner to prepay bills for its advertising or to extend credit to the client. Petitioner never offered to do any of these things, and never guaranteed payment of advertising bills to publishers." (Parenthetical matter ours.)

These cases make it clear that the present-day advertising agent who has gone to court is a professional man, in the sense that he counsels others as to the conduct of their business. Clients seek him out "because of professional standing," or for "expert advertising service and marketing counsel." Just as is true with other professional men, the service rendered his clients "varies according to the requirements of the particular case and the particular media selected." The agency is not a "mercantile corporation."

¹ *People ex rel. Morse International Agency vs. Cantor*, 196 N. Y. Supp. 514; 119 Misc. Rep. 355. (1922)

² 37 Fed. (2nd) 970. (1930)

The "client" adverted to in the cases cited is the advertiser. None of the cases refers to the publisher as enjoying that role. The professional and personal service rendered is rendered to the advertiser. The authorities cited likewise indicate the fact that control of the advertising space has passed into the hands of the advertiser.

There has been one case examined which maintains an opposite thesis. In *Basham vs. Lucas*,¹ the advertising agency is held to be a mercantile corporation, and not a personal service corporation. The decision is as unsatisfactory to the student of advertising practice as it apparently was to the judge who rendered it. The Court itself felt that it was treading upon uncertain terrain, as will appear from the following excerpt from the decision:

"I am bound to say that the testimony in this case leaves me in grave doubt and confusion as to the amount of capital in the business.... Just what part this borrowed money and the paid in capital stock played in the production of income for that year, I am left to guess.... I am thoroughly satisfied that such an order (for advertising space) as the one filed, made the plaintiff (the agency) directly liable to the advertising medium with which the order was placed." (Parenthetical matter and underscoring ours.)

While the scope of this study is to show the state of the law, in its relation to advertising practices, and not to argue the merits of the several decisions, it should be stated that the Court in the *Basham* case seems to have lost sight of the personal and professional services of the agency, the rendition of which are its principal occupation. The observation should be made in passing that the rule in the *Basham* case which holds the advertising agent liable for the cost of advertising space runs counter to the prevailing view of the Courts.

The later case of *Conover vs. Commissioner of Internal Revenue*, decided by the Federal Board of Tax Appeals,² is more persuasive than the *Basham* case. In holding that the S. A. Conover Co. was a personal service corporation the Board stated, in part:

"We come then to consider the only remaining qualification required under the definition of a personal service corporation, namely, is capital, (whether invested or borrowed) a material income producing factor? It is not sufficient to defeat personal service classification that capital be used in the business or that capital be incidental to the production of income. The capital must be a material factor in producing income....

"In this connection it is urged that the contract between the publisher and the advertising agent is such that the advertising agent is responsible for the payment of all bills for advertising, that recognition is extended only to agencies having good financial standing and that capital is necessary to obtain recognition as an agency for use in paying for space used by advertisers.

"It is our opinion that the matter of either the theoretical or legal liability, so long as the agent is not a principal dealing in the purchase and sale of space, has little to do with what we must decide.... The use of capital has been potential only....

"In the days of magazines with a national circulation reaching into millions of copies and the cost of advertising space into thousands of dollars per page, the preparation of such advertising and the selection of the proper media in which it is to appear has come to be recognized as a business or profession requiring skill and experience, and it was in such business that the taxpayer was principally engaged... the primary income producing factor was the experience and advice of Conover...." (Underscoring ours.)

¹ 21 Fed. (2nd) 550. (1927)

² 6 B.T.A. 679. (1928)

In the Iowa case of *Carnego vs. Crescent Coal Company*,¹ there appears the following interesting dictum in regard to personal services:

"Services," said the Court, "personal or otherwise, are so various and differ so much in their nature and value, that general application of the principle pertaining to the proof of value of property ought not to obtain. It is a matter of daily observations that prices paid different persons for like services differ radically. There is no general criterion, such as the open market, by which to ascertain what the rendition of a specified service is worth. This often depends on experience, or environment, and frequently on opportunity."

If it be true that the advertising agency, as that business is conducted today, renders a personal and professional service, the next question, in orderly sequence, is the determination of the character of the person served. In the Clegg case, decided in 1876, the "agent" served himself. That likewise was true in the Hampton case (1902). In the Allen case (1884) he was beginning to render some service to the advertiser. Likewise, he was held to be the agent of the advertiser in the Rosenbaum case. In the Kastor case, the Court terms advertisers the "patrons" of the agency and clearly defines the duties of the agency to his patron. The duties of the agency to his client, as defined in the Dolman case, include that of obtaining the "most efficient and economical space." In the Ayer case, he was clearly acting as the agent of the advertiser, and sued the advertiser for his commissions. Two other cases, Huber Hoge and Dorrance Sullivan, involving suits for advertising commissions show that the agency sued its principal, the advertiser, for his compensation. In the Fuller & Smith litigation, the Court found that advertisers "sought plaintiff's services because of professional standing." In the McCann case advertisers sought out the agency for "expert advertising service and marketing counsel." We find no case involving modern agency practice where the agency has sued the publisher for compensation. Apparently he looks only to the advertiser for recompense for the value of his services.

It seems logically and irrefutably to follow that the advertising agency, as that business is generally conducted today, is the agent of the advertiser.

Section 4.

Relations Between Advertisers and Publishers

The relations between advertisers and publishers depend in a large degree upon the nature of the contracts drawn between them for the purpose of advertising space. There is nothing unusual about this type of contract which distinguishes it from other contracts for the purchase of commodities. The usual rules for the interpretation of contracts apply here, and, in the great majority of cases, there is no confusion about the intent of the parties to the agreement.

Where one of the parties is in breach of the contract, there is an apparent conflict of opinion as to the measure of damages. There are several factors in the law of contracts which determine the measure of damages to be applied. A mutual or bilateral contract differs in form from a unilateral or non-mutual contract. A contract for personal services is treated somewhat differently as regards the measure of damages from one for the purchase of a commodity.

In the case of *Rishel vs. Stuyvesant*,² the Court discusses that matter in the following language:

"The contract for advertising in part resembles the usual contract for goods bought and sold and in part, resembles a contract for personal services, and in fact, it seems to be more akin to the latter. The logic of the rule as set forth in Sec. 145, Personal Property Law, is that the cost of material and labor, in the manufacture of commodities under a contract is so large a part of the contract price, that the seller of such merchandise, upon being apprised of the determination of the buyer not to proceed with the contract, is bound in order to minimize the damage, to cease the purchase of further raw

material, and the manufacture of that on hand. It is elementary that the party seeking to recover on a contract must not act so as to unnecessarily enhance the damages sustained by him. A party to a contract is entitled to its full benefits. In other words, he is entitled to the excess of the selling price over the cost....

"The contract for personal services does not as a matter of law differ from the contract for goods bargained and sold. The distinction is a factual one, in that the law does not take cognizance ordinarily of the expenditures made for subsistence in the carrying out of a contract. The measure of damages upon a breach of the contract for personal services prima facie is the contract price. This is the rule because usually there is no deduction to be made for the cost of producing such personal services.... Even in a contract for personal services, if the employee was obligated to spend money in connection with his employment, these necessary expenditures would have to be deducted from the contract price of the employee's services in an action for wrongful discharge....

"It has been repeatedly held in this jurisdiction that in contracts for advertising, where the defendant breaches his contract by notifying the plaintiff to discontinue further insertions of the advertising contracted for, the publisher is entitled to recover the profits he would have made if the defendant had fully performed. This can be gauged in only one way, the contract price less the cost of performance."

In the first Section we quoted from certain cases where advertising had been held to be a commodity. Mention here will be made of the case of *Starchroom vs. Threkheld*,¹ wherein a contract for advertising was held to be a contract for personal service:

"The nature of the contract," said the Court, "to furnish advertising 'to be taken and used by the plaintiff' would seem to be a contract in which the personality of the advertiser is material to the contract. Not only does the language used by the parties indicate that the advertising is to be on behalf of the Engraving Company but the nature of the business is such that it is not reasonable to find that the parties contemplated the use of the space by any one that the Engraving Company might designate. Such construction would lead to the conclusion that the Publishing Company would be required to carry an advertisement of any kind that the assignee of the Engraving Company might specify."

There appears to be a conflict of opinion as to whether a contract for advertising space is divisible or indivisible. There are two cases which at first blush would appear to be in conflict. The logic of these apparently variable decisions must be sought in the language of the contracts in suit. In the case of *Post vs. Frank*,² the Court stated that:

"The order being for a definite and fixed sum, and for a specific number of advertisements, or insertions, it must be deemed in view of the language used, to have been accepted in toto, by the commencement of the advertisement, and that the plaintiff thereby undertook to complete it. Having become a binding bilateral contract, the defendant could not cancel it without the plaintiff's consent. The part performance of an order for a definite number of insertions and for a definite amount necessarily implies an acceptance and an agreement to complete, as unless completed nothing would be earned."

¹ 163 Iowa 194; 143 N.W. 550. (1913)

² 204 N. Y. Supp. 659; 123 N. Y. Misc. 208. (1924)

¹ 13 Ohio App. 2d. (1920)

² 132 N. Y. Supp. 807; 75 Misc. N. Y. 129. (1912)

The opinion cites the case of *White vs. Allen Kingston*, stating that there is no conflict between the two.

Albert Frank, one of the parties in the above cited case, is an advertising agency. The name of its principal does not appear in the opinion.

In the case of *White vs. Allen Kingston*,¹ which was cited in *Post vs. Albert Frank*, the Court said that under the terms of the order, the publisher was not required to print the advertisement, but where it did print the advertisement, the advertiser could be held for its price. However, when the publisher ceased printing the advertisement, as it could at will, then the advertiser was not liable for what it had not received.

More light seems to be cast on the subject in the case of *Mendell vs. Will-young*,² from which the following is excerpted:

"The letter was an offer which was revocable until the first advertisement ran, which is the mark of acceptance.

"When after a contract had been entered into between two parties, notice is given to one of them that the contract is rescinded on his part... it is the duty of such other party, upon receiving such notice to save the former so far as it is in his power, all further damages. The plaintiff is entitled to damages, but the measure is not the full contract price. The profits to be made (by the publisher) are the measure of the damages." (Parenthetical matter ours.)

In the case of *Stumpf vs. Merz*,³ it was proved that the publication acceded to the cancellation of the contract by the advertiser, and the judgment apparently included payment only for those advertisements which had been run. The Court held as follows:

"Had the plaintiff gone on and completed the contract, or even properly protested against the defendant's act they might have recovered. They acquiesced, and the acquiescence was fatal."

In those cases where the full price for a series of advertisements was the only sum of money stated in the contract, there appears to have been an indivisible contract to perform the entire schedule, but where the amount for each individual advertisement is specified, the theory seems to be that the intent of the parties is that there shall be payment for each advertisement as it is run. In the case of *Cleveland Co. vs. Standard Amusement Company*,⁴ where a quantity discount for advertising space played a part, the measure of damages was the difference between the face value of the contract and the short rate.

As between advertisers and publishers there are other rights and obligations which may be implied in any contract for the purchase of advertising space. Perhaps the most important of these is the responsibility which the publisher assumes for the correct wording and execution of the advertising copy submitted by the advertiser. This was settled as long ago as the year 1813, and the rule has not been changed since, insofar as we have been able to discover. The 1813 case adverted to is that of *George Jackson vs. Abijah Adams*,⁵ from which the following is quoted:

"The undertaking of the defendants (the publisher) in this case, being for hire, and in the exercise of their ordinary occupation, that of printing, they must be answerable for any neglect or mismanagement in the performance of their trust, and for any loss or damage which might have been avoided by that degree of care and diligence which their employer had a right to expect and rely upon. If therefore the printers were not misled by the writing of the advertisement delivered them, as for instance supposing it were examinable, if the twentieth, were not so written as to be mistaken for the

¹ 126 N. Y. Supp. 150; 69 N. Y. Misc. 627. (1910)

² 85 N. Y. Supp. 647; 42 N. Y. Misc. 210. (1903)

³ 99 N. Y. Supp. 337; 46 N. Y. Misc. 620. (1906)

⁴ 133 N. E. 615; 103 Ohio St. 382. (1921)

⁵ 9 Mass. 484. (1813)

twenty-eighth, supposing a suitable degree of attention to the part of the compositor, I think the defendants were liable in this action....

"But for incidental and remote consequences, which may prove to be as in this case losses and damages of a very considerable amount, the risk respecting them not having been notified or stated to him, and of which he had no warning, for these I think he is not liable upon what may be considered within the ordinary undertaking implied from his occupation." (Parenthetical matter ours.)

In every contract there is an implied provision that if the execution of the contract becomes impossible of performance, then the contract is voided. This general rule applies to contracts for advertising space. The rule is stated in the case of *Alfred Marks Realty Co. vs. Churchill's*,⁶ as follows:

"... it may not be amiss to call attention to the consideration that this contract falls within the established rule that, where the performance of an agreement depends upon the happening of an event, over which neither party has any control, an implied condition will be read into the agreement to the effect that the contract shall be abrogated upon the non-happening of such an event."

In the new field of radio broadcasting, problems arise which have not yet been fully considered by the Courts. Such a problem is the question of libel. An interesting decision is that of *Sorenson vs. Wood*,⁷ wherein the Court held that:

"One who publishes and broadcasts to 200,000 people must place someone with judgment, and authority to exclude libellous matter, or answer for the wrong. There is no good reason for not applying the same rule of responsibility with reference to broadcasting stations that is applied to their competitors the newspapers."

In regard to the right of the publisher to approve advertising copy which is to appear in his publication, the case of *Amalgamated Furniture Factories, Inc. vs. Rochester Times Union*,⁸ is in point. In that case the Court held that:

"The privilege of approval of copy was expressly reserved to it in the contract....

"If the card rate (containing this provision) were part of the contract, the defendant cannot refuse to approve copy without a reasonable ground for doing so, and even if it were not part of the contract, it has the right, in my opinion, to refuse copy which contains a misrepresentation, or statements of fact known to be untrue, deceptive or misleading.... Irrespective of the rate card, the defendant was under no contract obligation to publish untrue statements in its advertising columns. It not only had the right but was charged with the duty to refuse to give publicity to statements known to be untrue." (Parenthetical matter ours.)

Section 5.

Relations Between Advertisers and Agencies

It is a self-evident fact that the advertising agent who adheres to the standards of agency practice enunciated by the American Association of Advertising Agencies, is a professional man, rendering an advertising and marketing service of a personal nature. This is the kernel of the decisions which have been rendered with respect to the modern advertising agency. For convenience and clarity, agencies discussed in this chapter will be understood to be agencies of that character, as distinguished from the earlier space brokers, and as distinguished from special

⁶ 153 N. Y. Supp. 264; 90 N. Y. Misc. 370. (1915)

⁷ 243 N. W. 82; 123 Nebraska 348. (1932)

⁸ 219 N. Y. Supp. 705; 128 N. Y. Misc. 673. (1927)

representatives of advertising mediums. The case of *Kastor vs. Elders*, earlier cited, is a good illustration of the type of service rendered. *Fuller & Smith vs. Routzahn* and *McCann vs. the Commissioner of Internal Revenue* are corroborative, as is *Conover vs. the Commissioner of Internal Revenue*. Other citations might be adduced, but they would be cumulative rather than distinctive. The only case found which holds to a minority view is that of *Basham vs. Lucas*, elsewhere discussed as an unsatisfactory decision.¹

In the case of *Kaden vs. Moon*,² the Court stated that:

"It is immaterial what terms are used by the parties, or by what name the transaction is designated, if the facts taken as a whole fairly disclose that the one party acting for or representing another by the latter's authority; and that the relationship of agency does not depend in every instance upon an express appointment and acceptance, but is often to be implied from the words and conduct of the parties to the transaction.... There is no doubt about the fact that the D'Arcy Company was the agent of defendant (an advertiser) in having the advertisements prepared and printed, and that the defendant was chargeable with the knowledge of everything printed therein." (Parenthetical matter ours.)

Thus, the relation of principal and agent may be inferred from the nature of the work of the advertising agency.

In the New York case of *Dorrance Sullivan vs. Bright Star Battery*,³ a contract was before the Court in which it was stated that "this letter is to employ you as our advertising agents and merchandising advisers. We authorize you to plan, prepare and place our advertising in accordance with our approval, etc." It would appear that in this instrument, the parties were seeking to create the relation of principal and agent.

According to Mr. Roy Durstine,⁴ an eminent advertising agent, "it is the business of the agency to make contracts with sellers of advertising space and materials in behalf of the advertiser, to conduct the intricate purchase of space and materials, to see that the advertising is as ordered and to act as a central disbursing office in paying the advertiser's bills."

A very realistic concept of advertising agency functions is contained in a letter from F. Wayland Ayer, published in 1921,⁵ and which had been brought to the attention of counsel, from which the following is excerpted:

"It should be the sole business of this agency to serve its clients. Naturally, the basis of remuneration for this service then becomes a matter of mutual agreement between our clients and ourselves. None other than we could know the cost of the service. None other than the client could judge its value to him."

Mr. Ayer proclaims himself to be the agent of the advertiser, and of necessity a party adverse to the interest of the publisher.

We have examined a number of contracts between advertisers and advertising agencies, notably contracts used by such agencies as the J. Walter Thompson Company, Benton & Bowles, N. W. Ayer, Moser & Cotins, and others, and all such contracts contain an offer by the agencies of a personal, professional, and marketing service to advertiser clients. None of these contracts specifies a possible, potential, or actual service to the publisher. It would thus appear that opinion among advertising agencies and the Courts is identical as to the character and type of service rendered the clients.

¹ 21 Fed. (2nd) 550. (1927)

² 26 S. W. (2nd) 812. (1930)

³ 227 N. Y. Supp. 675 - R - 249 N. Y. 593; 164 N. E. 596. (1928)

⁴ "Advertising Year Book," 1924.

⁵ "Editor & Publisher," March 26, 1921, page 12.

advertisers have been held liable for the acts of advertising agencies retained by them. In the New York case of *Montague vs. All-Package Grocery Stores*,¹ the agent was employed to publish the house organ of the All-Package Grocery Company. He did not pay the bills for which he had received moneys from the advertiser. The Court, in effect, said that the arrangement did not contemplate that the agency should operate independently of the advertiser, but should act merely as his spokesman at all times. The supply houses did not know the terms of the agreement but that fact was not considered by the Court to be important.

The advertiser had received the benefit of the materials supplied, and he was required to pay the supplier, even though he had already paid the agent.

In the companion case of *All-Package Grocery Stores Co. vs. McAtamney*,² the advertiser sued the agency for non-payment of moneys which had been paid to him for the account of the supplier. The agent was held to be guilty of conversion of funds held by him in a fiduciary capacity.

A somewhat similar state of facts existed in the New York case of *Clarke vs. Watt*.³ There, the agent left town before paying bills which he had contracted with the publisher. The Court said in part:

"The contract bears upon its face indisputable evidence that the advertising contracted for is for the benefit of some other person than the H. B. Kohler Agency. This being so, the plaintiff (the publisher) was entitled to assume that there was an undisclosed principal other than the advertising agency.... The defendant, having received the full benefit of the advertising, the agent virtually acting for both parties, and the agent having disappeared and become irresponsible, it is difficult to see the justice of the rule which allows the real beneficiary to escape payment, and deprives the plaintiff (the publisher) of the fruits of his labor...." (Parenthetical matter ours.)

The advertiser was twice out-of-pocket.

The case of *Daily Attractions vs. Albert Frank*, cited for informative purposes only, and not as precedent authority, decided in 1917 by the Municipal Court of the City of New York, was an instance in which the advertiser became insolvent and the publisher attempted to hold the agency. The Court held that there was no liability attaching to the agency in the event of the insolvency of his principal, the advertiser.

From the preceding paragraphs, it thus appears that it is the contract between the advertiser and the agency which creates the agency relation; this contract defines the scope of the agency's services; it provides the method by which the agency is to be paid. There is no necessity for a corresponding contract between the agency and the publisher.

The rights and duties of principal and agent have been so carefully considered in a long line of decisions that in most instances the law and equity of any given set of circumstances can be easily determined.

"The agent is not entitled to avail himself of any advantage that his position may give him to profit beyond the agreed compensation for his services. He will be required to account to his employer or principal for any gift, gratuity or benefit received by him in violation of his duty, or any interest acquired adverse to his principal, without a disclosure, though it does not appear that the principal has suffered an actual loss by fraud or otherwise." (21 R.C.L. 826.)

Thus it will be seen that the agent owes the principal undivided loyalty, unless the principal has contracted for less. In *Hewit and Hosier vs. Norman Lichty*,⁴ the Court stated that "An agent owes to his principal the utmost good faith, and is

¹ 182 N. Y. App. Div. 500; 169 N. Y. Supp. 920. (1918)

² 174 App. Div. 778; 161 N. Y. Supp. 622. (1916)

³ 83 N. Y. Misc. 404; 145 N. Y. Supp. 145. (1913)

⁴ 147 Iowa 270; 126 N. W. 170. (1910)

bound to disclose to him every material fact relating to the conduct of the business entrusted to him."

The question of who pays the advertising agency more properly belongs in the field of business economics and for that reason, has not been developed here. Likewise the question of who pays the agency does not necessarily determine the question of who is the principal. It has been shown that the contract between the advertising agent and his client, the advertiser, makes possible the financial yield in the form of a discount, or fee, or commission, or differential, to the agency. The relationship between a specific advertiser and a specific agency is a matter of contract in each instance. "It appears that the agent sometimes gives his advertising patrons the benefit of part of the agent's commission, but this is a matter of contract in each instance, and is determined by the nature of the account, the kind and extent of service required of the agent, competition, etc."

Section 6.

Relations Between Agencies and Publishers

In Section 2 dealing with the advertising agent in legal history, we attempted to trace, through the decisions, the evolution of the modern agency. Originally a space broker, representing neither the interest of the advertiser nor of the publisher, he gradually developed to the point where he was representing the advertiser exclusively in the preparation of advertising concepts and the placement of space contracts. Coincident therewith, other agents developed, to represent publishers exclusively. These agents became known as "special representatives," whose sole function it was to sell the advertising space of the publisher. These special representatives bear the same legal relationship to the publisher that the advertising agency does to the advertiser.

In the case of *Daily Attractions vs. Frank*,² the Court said that "the order blank and papers in evidence showed that the Frank Co. was an agent acting for a disclosed principal, the Mason-Seaman Transportation Co., and for that reason any claim against the defendant which the plaintiff might have for the unpaid bills was against the latter company." The Court dismissed the complaint against Frank, the agency, on these grounds.

This presumption may be rebutted if it can be shown that the agency assumed personal responsibility for the payment of the bills, but there must be an express undertaking on its part which would make it personally liable. A mere trade practice, by which the agency found it to be good business to pay the publisher in the event of a default by the advertiser, is not sufficient to create a legal obligation upon it so to do.

If, as occasionally happens, the agency makes a contract with the publisher, and the publisher has sued the agency, upon discovery of the identity of the advertiser, the publisher may vouch him in as the real party defendant. (*Clarke vs. Watt*.)³

In the case of *Montague vs. All-Package Grocery Co.*,⁴ the Court held that "although the plaintiff originally brought suit against the agent it did not constitute an election to look to the agent only, and it had a right to implead the undisclosed principal on discovering its existence."

The agency has no title to the space for which he contracts. He is not, strictly speaking, a party to the contract. "Plaintiff did not contract for advertising space on its own account. It merely reserved space for specific clients." (*Fuller & Smith vs. Routzahn*.)⁵

The agency apparently has little power to alter the terms of a contract for advertising space, made on behalf of its client, and if the publisher accedes to changes authorized by the agency and not by the advertiser, he acts at his own peril. "The order was definite in its terms and signed by the defendant (the advertiser). Richardson (the agent) changed the terms of the order over defendant's

signature in the presence of the plaintiff (the publisher), and the plaintiff accepted the order as changed without questioning Richardson's authority to make that change, and, in so doing it acted at its peril." (*Presbrey vs. Miller*.)¹ (Parenthetical matter ours.)

The agency may not transfer space from one client to another, unless the publisher grants the agency a property right in the space (*Fuller & Smith vs. Routzahn, supra*), but a property right in the advertising space may be transferred under the terms of a contract which so provides. (*Gardner vs. Roycrofters*.)² In the last cited case the Court held:

"The magazines represent a valuable business enterprise. The defendants are the actual owners and conduct the editorial and publishing part of the business. The plaintiff has the exclusive right, with certain reservations to the advertising space or privileges of the magazines, and has spent many years in developing that part of the business, and it is a valuable property right. The right to publish the magazines is a property right of the defendants, and the exclusive right to control the advertising department is the property right of the plaintiff."

In the case of *Dolman vs. U. S. Rubber*,³ the Court held that it was the duty of the agency to keep himself informed on the business of the publisher. "On all of these matters," said the Court, "it undertakes to be as fully informed as the proprietor of the newspaper. Both as to the newspaper and also in the interest of the advertiser, it undertakes to do perfect work."

The agency should show strict impartiality towards the various mediums of advertising. "An agent cannot act so as to bind his principal when he has an adverse interest to him in himself." (*Allen vs. Pierpont*.)⁴

The publisher is not bound to accept advertisements from any one who offers to pay for the advertising space. (*Meek vs. Costello*.)⁵ The publisher, therefore, is not a common carrier of advertisements. The publisher has a lawful monopoly in and control of his own business. (*Blumenstock vs. Curtis Publishing Co.*)⁶ (*A. & P. vs. Cream of Wheat*.)⁷ The publisher may suit his whim and caprice in selling his space, provided he does not, by combination or conspiracy, combine to deprive an advertiser or agency of a market.

A different test is applicable, however, when there is a combination of publishers, or of agents, or of publishers and agents, to enforce an arbitrary rule of conduct upon advertisers or agents. The administrative proceeding by the Federal Trade Commission against the American Association of Advertising Agencies, the American Newspaper Publishers Association, the Southern Newspaper Publishers Association, and others, (dismissed by the Commission without assignment of reason) was not a judicial determination of the issues. It has always seemed to the writer that the prolixity of allegations in the Commission's complaint served to obscure the essential question which the Commission was called upon to decide. That question was this: whether a group of agencies, acting in concert with a group of publishers, could effectively interfere with the right of an advertiser to deal directly with a publisher upon mutually acceptable terms, by threatening to withhold advertising lineage from those publishers who dealt directly with advertisers at the publisher's net rate. It has been strongly urged that such conduct would amount to secondary boycott, if the threat to withhold was for the purpose, and with the effect, of withholding advertising appropriations from publishers in order to injure the business and commerce of the advertiser who sought to deal directly with the publisher at the publisher's net rate.⁸

¹ 65 N. Y. Misc. 52; 119 N. Y. Supp. 192. (1909)

² 197 N. Y. Supp. 511; 90 N. E. 1161. (1909)

³ 288 Pac. 131. (1930)

⁴ 22 Fed. 582. (1884)

⁵ 33 So. Dakota 511; 143 N. W. 950. (1913)

⁶ 252 U. S. 436. (1920)

⁷ 224 Fed. 566. (1915)

⁸ The writer acted as counsel for the Federal Trade Commission in the preparation for trial of the complaint commented upon here.

¹ *Kastor vs. Elders*, 170 Mo. App. 490; 156 S. W. 737. (1913)

² Municipal Court of New York City, 1917.

³ 145 N. Y. Supp. 145; 83 N. Y. Misc. 404. (1913)

⁴ 182 App. Div. 500; 169 N. Y. Supp. 920. (1918)

⁵ 23 Fed. (2nd) 959. (1927)

Before the Commission proceeding is too lightly dismissed from mind as having settled an issue, the case of *Rankin vs. Associated Billposters of the United States and Canada*¹ should be considered. In that case, and its companion case,² (before the Court on demurrer) Ramsey and Rankin, formerly solicitors (agents), officially recognized by the trade Association in outdoor advertising, sued for treble damages under the Sherman Act, alleging that the Association (in 1911) cancelled their licenses and refused to renew them. The Court held that as "direct result of the defendants' joint acts plaintiffs' interstate and foreign business has been greatly limited or destroyed." And further that the "purpose of the combination here challenged is to destroy competition and secure a monopoly by limiting and restricting commerce in posters to channels dictated by the confederates, to exclude from such trade the undesired, including the plaintiffs and to enrich the members by demanding non-competitive prices. The allegations clearly show that the result has been as designated, that the statute has been violated, and plaintiffs' business has suffered." There were other considerations in the case, which might be argued to have influenced the Court's decision, but it should not be overlooked, by those experimentally inclined, that the members of the Outdoor Advertising Association of America have had to meet judgments approximating \$300,000 in suits brought by Ramsey and Rankin under the authority of the Supreme Court ruling to which reference has been made.

Reasoning generally, it would appear that if the advertiser is entitled to loyalty from his advertising agent (which would include the duty of the agent to purchase space for his client upon the best terms available), and if the advertiser is free to deal with his agent upon such terms and conditions as may be mutually agreeable, the wrong occasioned by a combination or conspiracy to deprive the advertiser of the agent's loyalty or to force the advertiser to do business upon arbitrary terms would be actionable at law.

In case of conflict of interest between the advertiser and the publisher, it is the duty of the agent to look to the advertiser for instructions. It is the duty of the modern advertising agent to deal with the publisher as with a stranger. There is no legal community of interest between the publisher and the advertiser, and by pertinent analogy, there can be no legal community of interest between the agent, representing the advertiser, and the publisher with whom the advertiser deals. The agency must advance the interests of its principal, the advertiser, if necessary to the detriment of the publisher.

The money which the modern agency usually receives from its advertiser-clients is divisible into two parts: First, money which the agency receives by way of fee, discount or commission for its services; and second, money which the agency receives expressly for payment to publishers. The second class of money is held by the agency in a fiduciary capacity for payment to publishers; those funds are never its property. They are held by it under an implied trust.³ The commingling of funds properly belonging to the agency with funds held by the agency expressly for transmission to publishers is a breach of the fiduciary relation.

We are informed that there are modern agencies which own collateral services, such as printing and engraving establishments, and that in such cases, it is the practice of the agency to purchase materials from its subsidiary or allied companies at one price and to sell to the advertiser at another. In such transactions, the agency again is acting as a fiduciary of its principal, the advertiser, to whom it owes the duty of full disclosure of every matter which might affect the advertiser's interest. If employed to sell, the agent may not become the purchaser; if employed to buy, he may not be the seller.⁴ The law is strict upon this point.

Thus, we conclude that in law, as in morals, no man can have two masters of conflicting interests. The thesis treated in Section 2, dealing with the evolution and historical development of the advertising agency emphasizes the genesis of the modern advertising agent's concept of his duties. That concept, as we have observed, has been given the impress of legal sanction by the decisions which, in their own sequential development, reflect the changes undergone in the character of the advertising agent and in the nature of his activities in the attainment of his present-day status as the agent of the advertiser.

¹ *Rankin vs. Associated Billposters*, (etc.) 260 U. S. 501. (1923)

² *Ramsey vs. Associated Billposters*, (etc.) 260 U. S. 501. (1923)

³ 26 R.C.L. 1200.

⁴ U. S. vs. Carter, 217 U. S. 286; *Gardner vs. Ogden*, 22 N. Y. 327; *Tyler vs. Sanborn*, 128 Ill. 136.

Chapter X

COMPILATION OF CASES OF RECORD ON WHICH OPINION WAS BASED, TOGETHER WITH BRIEF REFERENCE TO EACH

The list of cases which follows includes those which were cited in Part II of the study, as well as a large number of other cases bearing upon advertising questions, taken from Federal and State reports. Most of the cases listed have no relationship to the question of advertising agency compensation methods. They are listed for their informative value -- to advertisers, agents and publishers -- with a short reference to the subject matter before the Court. No attempt has been made to analyze the full scope of all the questions presented in all these cases. They are classified under the following headings:

- (1) Nature of an advertisement
- (2) Advertising media, types and peculiarities
- (3) Advertising media -- agents of media
- (4) Advertisers -- special classes
- (5) Special service bureaus
- (6) Legal recognition of advertising terms and definitions
- (7) Advertising agencies -- historical
- (8) Advertising agents -- modern cases
- (9) Miscellaneous agents who place advertising
- (10) Advertising contracts -- performance or breach
- (11) Advertising contracts -- fraud in the inducement
- (12) Advertising contracts -- special nature of
- (13) Tortious advertising -- common law.

(1) Nature Of An Advertisement

Case	Year	Case	Year
<i>Advertiser Company vs. State</i> , 193 Ala 418, 69 So 501; Liquor advertisement not a vested right.	1915	<i>Boardman vs. S. S. McClure Publishing Company</i> , 123 Fed 614; Making contract for advertisement is "doing business," circulation is not.	1903
<i>Ahern vs. Standard Life Insurance</i> , 32 NY Super Ct 441; Purpose of an advertisement.	1870	<i>Bosch vs. Rushmore</i> , 255 Fed 465; Advertised name is valuable.	1918
<i>Alpine vs. Friend</i> , 244 Mass 164, 138 NE 553; Advertisement not a warranty.	1923	<i>Bowles vs. Chicago Live Stock</i> , 243 Ill App 71; Advertising subject to cattle exchange discipline.	1926
<i>American Fire Insurance Company vs. Landfare</i> , 56 Neb 482, 76 NW 1068; Not all advertisements seen.	1898	<i>Brandenburg vs. Northwest Jobbers</i> , 128 Minn 411, 151 NW 134; Innocent advertising of sale of another's goods not conversion.	1915
<i>Asbestolith vs. Howland</i> , 120 NYS 93; Advertisements not a part of contract.	1909	<i>Brookins vs. National Refining</i> , 330 Ill 74, 160 NE 97; Value of advertising scheme problematical.	1927
<i>A. & P. Tea Company vs. Cream of Wheat</i> , 227 Fed 46; Trademark is lawful monopoly.	1915	<i>Brooks vs. Patterson</i> , 234 Ky 757, 29 SW (2nd) 26; Advertisement does not control sale price of house.	1930
<i>Beam vs. State</i> , 106 Tex Cr App 341, 292 SW 239; False advertising might be criminal.	1927	<i>Browne vs. Sharkey</i> , 58 Ore 480, 115 P 156; Advertising work is personal.	1911
<i>Bird vs. Burgsteiner</i> , 100 Ga 486, 28 SE 219; Purpose of legal advertisement.	1897	<i>Bry Block vs. Columbia Portrait Company</i> , 219 Fed 710; Trade puffing in advertising will not support fraud.	1915

Case	Year	Case	Year
Burnstine, in re, 169 NY App Div 540, 155 NYS 500; Attorney's false receipt for advertising purposes, grounds for censure.	1915	Darst vs. Doom, 38 Ill App 397; Pointing out house for sale is not advertising.	1890
Bussing vs. Lowell, 233 NY App Div 493, 253 NYS 719; Advertising is part of sales.	1931	Dickson vs. Keeler, 82 Cal App 94, 254 P 919; Rights under breach advertising contract assignable.	1927
Butterick vs. Federal Trade Commission, 4 Fed (2nd) 910; Advertising and sales one affair of commerce.	1925	Dr. Shoop vs. Clifford, 11 Ga App 490, 75 SE 822; Dealer helps contract explained by parole evidence.	1912
California Fireproof vs. Brundige, 199 Cal 185, 248 P 669; Advertising is incident to the monopoly of a utility.	1926	Dolker vs. Freeholders, 90 NJL 406, 101 A 370; Official advertising distinguished from commercial.	1917
Chenoweth vs. State Board of Medical Examiners, 57 Colo 74, 141 P 132; Professional character does not preclude the right to advertise.	1913	Eastern Advertising Company vs. McGaw, 89 Md 72, 42 A 923; Contract to place car cards is personal.	1899
Chicago, I. & L. Railway vs. US, 219 US 486; Advertising not good payment for transportation.	1911	Edison vs. Mills-Edison, 74 NJ Eq 521, 70 A 191; Right to use machine implies right to advertise use of machine.	1908
Cohen, in re, 261 Mass 484, 159 NE 495; Advertising undignified for attorneys and forbidden.	1928	Edwards vs. Lubbock Company, 33 SW (2nd) 482, N.S.R. ¹ Definition of advertisement.	1930
Colorado Springs vs. American Publishing Company, 38 CCA 433, 97 Fed 843; Advertising within purview of real estate corporation agent.	1899	Elliot vs. Jones, 66 NY Misc Rep 95, 120 NYS 989; Advertisement copied supports unfair competition.	1910
Commonwealth vs. Allison, 227 Mass 57, 116 NE 265; Definition of advertising.	1927	English American Loan vs. Hiers, 112 Ga 823, 38 SE 103; Effect of notice of advertisement.	1901
Commonwealth vs. Jackson, 34 Pa Super Ct 178; "Common right of advertising."	1907	Erit Realty vs. Sea Gate, 227 NYS 600-A-249 NY 52, 162 NE 581; Does not affect conveyance of lands.	1928
Constitutional Indemnity vs. Shytles, 47 Fed (2nd) 441; Advertising important part of any business.	1931	Fryer vs. N Y Brokerage Company, 162 Ia 688, 133 NW 110; Advertisement used to decide whether one had been employed.	1911
Continental Insurance Company vs. Equitable Trust Company, 127 NY Misc Rep 45, 215 NYS 281-287; Advertisements made basis of fraud action.	1926	Georgian Company vs. Bloom, 27 Ga App 468, 108 SE 813; Advertised price not an offered price, compelling sale.	1921
Cox vs. Phonograph Company, 208 Ky 388, 270 SW 811; Advertising is not "doing business."	1925	Groves vs. Byrnes, 181 Minn 196, 231 NW 926; Contest advertisement is of fer.	1930
		Gschwendter vs. Gebhart, 142 Ill App 260; Advertisement is not constructive notice.	1908

¹N.S.R. indicates no state report.

Case	Year	Case	Year
Harrell vs. Peters Cartridge, 36 Okla 684, 129 P 872; Advertising exhibition is not "doing business."	1913	Kaufman vs. Smart Set Specialty, 167 NYS 549; Advertisement admitted to define terms of oral contract of employment.	1917
Hartford Trust vs. West Hartford, 84 Conn 646, 81 A 244; Marked advertisement in paper is not notice.	1911	Kentucky Board of Dental Examiners vs. Crowell, 220 Ky 1, 294 SW 818; Fraudulent advertising unprofessional for dentist.	1926
Hazzard vs. Hoxsie, 53 Hun 417, 6 NYS 295; Value of advertisement impossible to determine.	1889	Koke Company vs. Coca-Cola Company, 255 Fed 894, -R- 254 US 143, 41 Sup Ct 113; Trademark is an advertisement.	1919
Heathcote vs. Curtis Publishing Company, 229 Mass 569, 118 NE 909; Advertisement not a guarantee, publisher not guarantor.	1918	Lewis vs. Sherin, 194 Fed 976; Copyrighting is personal service; damages for contract breach are full face.	1912
Hilson vs. Foster, 80 Fed 896; Money invested in advertising is part of business.	1897	Litscher vs. Stiles, 247 Mich 365, 225 NW 512; Newspaper advertisement alone insufficient to bind one as partner.	1929
Hood vs. Beekins Van, 178 Cal 150, 172 P 594; Advertisement admissible to show intent of contracting parties.	1918	Lovett vs. Loeser, 124 NY Misc Rep 81, 207 NYS 753; Advertisement not an offer, unless it contains terms sufficient for complete contract.	1924
Hoover vs. Sesquicentennial, 26 Fed (2nd) 821; Legal decision not proper advertising copy.	1928	Lucas vs. Gross, 32 Ohio App 183, 161 NE 362; Performed advertising contract may be assigned.	1927
Illinois Central Railway vs. Stith's Administrators, 120 Ky 237, 85 SW 1173; Advertisement not authoritative for test of mechanical efficiency.	1905	Lueddeman vs. Rudolph, 79 Ore 249, 154 P 116; Advertisement for sale of land, if described, may be offer.	1916
Ingalls vs. Burlingame, 71 N H 19, 51 Atl 175; Failure of advertiser to see own advertisement for two years, negligent.	1901	Lynch vs. Beekins Van, 31 Cal App 68, 159 P 822; Advertisement not seen not evidence of ambiguous contract.	1916
International Heating vs. Oliver Oil Burner, 288 Fed 708-A-263 US 714; Advertising copy not subject of lawful monopoly.	1923	McDermott vs. DeMeridor, 80 NJL 67, 76 A 331; Advertising contract personal, damages are full face.	1910
Jell-o vs. Landes, 20 Fed (2nd) 120; Distribution of advertisements not interstate commerce.	1927	Marcus vs. Myers, 11 Times Law Reports 327 (Q.B.Div.); Jury finding of loss of trade for non-publication of advertisement sustained.	1895
Johnston vs. Blanchard, 16 Cal App 321, 116 P 973; Distribution of advertisements not personal and assignable (handbills).	1911	Masline vs. NY, NH & H Railway, 95 Conn 702, 112 Atl 639; Idea that advertising would increase revenue is not saleable.	1921
Kash vs. United Star Oil, 192 Ky 422, 233 SW 898; Advertisement not sufficient writing to satisfy statute of frauds.	1921		

Case	Year	Case	Year
Mertins vs. Hubbel, 190 Ala 311, 67 So 275; Transitory value of advertisement no defense.	1914	People vs. Carp, 180 Ill App 673; Advertisement admissible to show attempt to get business without license.	1913
Meyer vs. Packard, 106 Ohio St 328, 140 NE 118; Advertisement guide to intent of contracting parties.	1922	Peters vs. McPhadden, 75 Wash 525, 135 P 28; Advertisement inadmissible to show value of stock.	1913
Moeckel vs. Diesenworth, 253 Mich 284, 235 NW 157; No implied warranty in advertisement of auction sale of cows.	1931	Pierson vs. Morch, 82 NY 503; Offer of reward by advertisement is an offer.	1880
Motion Picture Advertising Company vs. Modica, 18 La Ct App 647, 139 So 80; Power to purchase supplies is power to buy advertising.	1932	Raynard vs. State, 19 Ala App 281, 96 So 723; Advertisement is public offering for sale.	1923
Moxie vs. Modoc, 153 Fed 487; Label, wrapper, are advertisements.	1907	Remick vs. American Auto, 5 Fed (2nd) 411-A-269 US 542; Radio broadcast is public offering for sale.	1925
Myles Standish vs. Champion Spark Plug, 282 Fed 961; Supply of plugs at less than cost to Ford is advertisement.	1922	Rice vs. Green, 199 Wis 518, 227 NW 22; Advertising for resale is sufficient acceptance to complete sale.	1929
National Car Advertising Company vs. Louisville & N. Railroad, 110 Va 413, 66 SE 88; Advertising on box cards is ultra vires for corporation not specifically authorized.	1909	Rishel vs. Stuyvesant, 123 NY Misc Rep 208, 204 NYS 659; Advertising contract is personal service contract.	1924
National Cloak vs. Shapiro, 189 Fed 215; Picture used for advertisement is subject of copyright.	1911	Rogers vs. Sandersville, 120 Ga 192, 47 SE 557; Salesman posts handbills as incident to trade.	1904
New Jersey Asbestos vs. Federal Trade Commission, 264 Fed 509; Advertising is method of selling goods.	1920	Royal Baking Powder vs. Raymond, 70 Fed 376; Trademark is a notice on artificial product.	1895
Newbro vs. Undeland, 69 Neb 821, 96 NW 635; Fulsome language is not fraudulent advertising.	1903	Russel vs. Weiler, 28 Ohio Cir Ct Rep 176; Advertisement admissible to determine presence of fraud.	1905
Noell vs. Remmert, 326 Mo 148, 30 SW (2nd) 1009; Denial of realty restrictions not estopped by advertisement.	1930	Saenger Amusement vs. Murray, 128 Miss 782, 91 So 459; Advertisements to show ownership are hearsay without corroboration.	1922
Oliver vs. Henley, 119 Tex 178, 21 SW (2nd) 576; Advertisement an offer if complete contract is contained.	1929	Sanka vs. Broadway Subway Advertising Company, 221 NY App Div 579, 224 NYS 514; Courts will not grant specific performance of advertising contract.	1927
Payne vs. Lautz, 168 NYS 369-A-171 NYS 1094; Advertising coupons are transferable choses in action.	1918	Silver vs. Federal Trade Commission, 289 Fed 985; Honest opinion in advertisement not enjoynable as unfair competition.	1923

Case	Year	Case	Year
Springfield Metallic Casket vs. Dunn, 12 Ga App 8, 76 SE 644; Time is of the essence in advertising contracts.	1912	Tradesman vs. Superior, 147 Mich 701, 111 NW 343; Damages for breach is face of contract, when the value thereof is not used for cost of publication.	1907
Standard Oil Company vs. California Peach & Fig Growers, 28 Fed (2nd) 283; Money spent in advertising is valuable property right.	1928	United Profit Sharing vs. US, 66 Ct Cl 171; Promotional advertising is capital expenditure for taxes.	1928
Starchroom Publishing Company vs. Threkeld Engraving Company, 13 Ohio App 281; Advertising contract a personal service contract.	1920	US Bedding vs. Andre, 105 Ark 111, 150 SW 413; Contracts for advertising not within apparent scope of drummers' authority.	1912
State vs. J. P. Bass Publishing Company, 104 Me 288, 71 A 894; Advertising is really soliciting.	1908	Van Tuyle vs. Pratt, 101 Mich 38, 59 NW 417; Unpublished advertisement immaterial as evidence of contractual intent.	1894
State s. i. Gentry vs. Long-Bell, 321 Mo 461, 12 SW (2nd) 64; Corporation having power to sell has power to advertise.	1928	Ware vs. Cortland, 133 NYS 60-R-210 NY 122, 103 NE 890; Personal service contract. Face is measure of damages.	1913
State vs. Salt Lake Tribune, 68 Utah 187, 249 P 474; Newspaper advertising is interstate commerce. Wilson act withdrew liquor advertisements from protection of interstate commerce.	1926	Weisz vs. Price, 186 Iowa 640, 172 NW 939; Advertisement held to be an offer, all elements present.	1919
Stevens vs. Yale, 113 Mich 680, 72 NW 5; Damages from non-publication of advertisement too conjectural.	1897	Whitcomb vs. Reed-Prentice, 262 Mass 348, 159 NE 922; Advertising by one who did not own the chattels was conversion.	1928
Stitt vs. Ward, 142 NY App Div 626, 127 NYS 351; Specific performance for advertising contract cannot be granted.	1911	Wilson vs. Orr, 197 Ill App 607; Advertisement need not be produced where publication only was in question.	1916
Stone vs. St. Louis Union, 150 Mo App 331, 150 SW 825; Advertisement to be offer must have all elements of contract.	1910	Woodward vs. Boston, 115 Mass 81; Advertisement expressed contract of parties.	1874
Stumpf vs. Merz, 46 NY Misc Rep 610-A-50 NY Misc Rep 543, 99 NYS 337; Position in publication immaterial in performance unless specified.	1906	Zeltner vs. Irwin, 25 NY App Div 228, 49 NYS 337; Invitation to invest not an offer.	1898
Sweeten vs. Friedman, 164 La 117, 118 So 787; Barber bound by advertised prices.	1928	(2) Advertising Media, Types and Peculiarities	
Taylor-Critchfield vs. Stuckhart, 275 Ill 129, 113 NE 895; Definition of advertisement.	1916	Barron Collier vs. Domino Macaroni, 215 Mo App 345, 248 SW 981; Car cards: extra contract costs no more to service. (See also all other cases of Barron Collier.)	1923
		Beltinck vs. Tacoma, 61 Wash 132, 111 P 1045; Theatre Curtain: display after delayed payments is not waiver.	1910

Case	Year	Case	Year
Boardman vs. S. S. McClure, 123 Fed 614; Business of publishing and circulating a magazine described.	1903	Dr. Shoop Family Medicine Company vs. Clifford, 11 Ga App 491, 75 SE 822; "Advertising matter which goes with an order of this size."	1912
Bour vs. Illinois Central, 176 Ill App 185; Damages for non-posting estimable.	1912	Druggists Circular vs. American Soda Fountain, 240 Mass 531, 134 NE 384; Space contract was mere reservation of space.	1922
Bowles vs. Live Stock Commission, 243 Ill App 71; Radio: limited facilities inherent in medium.	1926	Eastern Advertising Company vs. McGaw, 89 Md 72, 42 A 923; Car cards: personal service not assignable.	1899
Burnett vs. Marrs, 62 Ore 598, 125 P 838; Theatre curtain: valid contract.	1912	Eastern Advertising Company vs. Patch, 235 Mass 580, 127 NE 516; Car cards: verbal conditions of contract not admitted.	1920
Burr vs. American Spiral Spring, 81 NY 175; Book sold by subscription: performance.	1880	Elgin vs. Winchester, 300 Ill 214, 133 NE 205; Handbills: ordinance upset.	1921
California Fireproof vs. Brundige, 192 Cal 185, 248 P 669; Telephone directory: incident to operation of utility.	1926	Fairhaven Publishing Company vs. Bellingham, 51 Wash 108, 98 P 97; Definition of term "daily paper."	1908
Chase vs. 2nd Avenue Railway, 97 NY 384; Car cards: Statute of Frauds case.	1884	Federal Sign vs. Palmer, 176 NYS 565; Electric sign: darkened by war, permissible breach.	1919
Colorado Springs vs. American Publishing Company, 97 Fed 843, 38 CCA 433; Booklets: authority of manager to contract for.	1899	Feree vs. Mouquin-etc., 29 NY Misc Rep 624, 61 NYS 120; Car cards: cancellation with short rate interpreted.	1899
Commonwealth of Hendersonville vs. Prudden, 180 NC 475, 105 SE 7; Judicial notice of newspapers for legal advertisements.	1920	Fifth Avenue Coach vs. New York, 110 NYS 1037-A-194 NY 19-A-221 US 467; Bus cards: validity of ordinance of restriction.	1911
Commonwealth vs. National Biscuit, 32 Ky L 568, 106 SW 799; Billheads and letterheads not advertising matter.	1908	Finnegan vs. Buck, 185 NYS 928-R-230 NY 512, 130 NE 631; Newspaper: definition of.	1921
Constitutional Indemnity vs. Shytles, 47 Fed (2nd) 441; Stunt flying to advertise. Death occurred in line of business.	1931	Fischer vs. Stephens College, 47 SW (2nd) 1101, N.S.R.; Radio: salesman's rights when injured.	1932
Cunningham vs. Cohen, 14 NY Misc Rep 12, 35 NYS 125; Car cards: non-severable contract.	1895	Goodrich vs. Busse, 247 Ill 366, 93 NE 292; Advertising by public outcry: statute.	1910
Denver vs. Frueauff, 39 Colo 20, 88 P 389; Trading stamps: not a lottery.	1907	Groves vs. Byrnes, 113 Ore 149, 231 NW 928; Advertising contest: rules regarding.	1930

Case	Year	Case	Year
Harrel vs. Peters, 36 Okla 684, 129 P 872; Advertising by rifle marksman. Trick shooting exhibition.	1913	Kornegay vs. Goldsboro, 180 NC 441, 105 SE 187; Financial newspaper: defined: legal advertisements.	1920
Hass vs. Equity Theatres, 100 Pa Super Ct 225; Theatre Programs: breach of condition of distribution.	1931	Larkin vs. Commonwealth, 172 Ky 106, 189 SW 3; Travelling showroom: not "doing business" in state.	1916
Hazzard vs. Hoxsie, 6 NYS 295, 53 Hun 417; Theatre program: three theatres which closed at different times.	1889	Lee Lash vs. Northwest Consolidated Milling Company, 218 Fed 910; Movie house slides: nature of work. Case of account stated.	1914
Hopcraft vs. Kittredge, 162 Mass 1, 37 NE 783; Counter cards: performance of contract to print.	1894	Lee Lash vs. Toledo, 246 NY 51, 158 NE 15; Theatre curtain: performance should stop after notice to cancel.	1927
Houck vs. Ingles, 126 Minn 257, 148 NW 100; Theatre curtains: Sunday rule.	1914	Lerner vs. Roth, 136 NYS 61; Theatre curtain: duration of necessary showing interpreted.	1912
House of Gurney vs. Ronan, 187 Minn 150, 245 NW 30; Radio: breach of contract to pay fee for broadcast; fee to be based on purchases.	1932	Long-Costello vs. Rider, 7 SW (2nd) 387, N.S.R.; Direct mail: Ford dealers to buy for local solicitation.	1928
Howe vs. Motion Picture Advertising Service, 116 So 598, N.S.R.; Movie house slides: performance of contract.	1928	Ludden & Bates vs. Dairy & Farm Supply, 17 Ga 581, 87 SE 823; Milk bottle caps: delivery date in question.	1916
Imperial Curtain Company vs. Jacob, 163 Mich 72, 127 NW 772; Theatre curtain: not interstate commerce.	1910	McLeod Store vs. Vinson, 213 Ky 667, 281 SW 799; Guinea chicken hunt: liability of advertiser for injuries.	1926
Imperial Curtain Company vs. Strauss, 76 NY Misc Rep 533, 135 NYS 577; Theatre curtain: recovery face of contract.	1912	Mail & Express vs. Hamilton Garment, 120 NY Misc Rep 604, 217 NYS 284-R-220 NYS 886; Newspapers: consolidation does not necessarily imply inability to perform.	1926
International Heating vs. Oliver 011 Burner, 288 Fed 708-A-263 US 714; Mailing Lists: confidential information wrongfully used.	1923	Mitchell vs. International Tailoring Company, 170 Fed 91; Letterhead: when detachable is a patentable novelty.	1909
International Text Book vs. Auburn, 155 Fed 986; Handbills: ordinance restricting distribution upheld.	1907	Montague vs. All-Package, 182 NY App Div 500, 169 NYS 920; House organ: agent publishing, and principal held for bills.	1918
International Transportation Association vs. Bylenga, 254 Mich 236, 236 NW 771; Circular letter: deceptive form amounting to fraud.	1931	Morgenthau vs. Krieg, 101 Cal App 436, 281 P 692; Portable projection outfit: cancellation clause interpreted.	1929
Jell-o vs. Landes, 20 Fed (2nd) 120; Advertising matter distributed with goods not interstate commerce.	1927	Motion Picture Advertising Company vs. Capelle, 137 So 877, N.S.R.; Motion picture advertising: contract interpretation.	1931

Case	Year	Case	Year
Motion Picture Advertising Service vs. Modica, 18 La App 647, 139 S6 80; Motion picture house slides: authority to purchase for store owner.	1932	People vs. Johnson, 117 NY Misc Rep 133, 191 NYS 750; Ordinance forbidding distribution of handbills applies only to advertisements.	1921
Motion Picture Trade vs. Wallace, 180 NYS 937-A-186, NYS 80; Theatre Directory: right to cancel.	1921	Periodical Press vs. Sherman Elliott, 143 Minn 489, 174 NW 516; Pamphlets: apportionment of cost for cancellation of part of order.	1919
Moxie vs. Modoc, 153 Fed 487; Labels, wrappers: infringement of copyright.	1907	Porter vs. Kiewel Brew, 137 Minn 81, 162 NW 887; Premium catalogues: rule of damages for breach of contract.	1917
Munden vs. Harris, 153 Mo App 652, 134 SW 1076; Window display: violation of right of privacy.	1911	Railway Advertising Company vs. Possner, 35 NY Misc Rep 385, 71 NYS 742; Car cards: proper cancellation date of contract.	1901
Nixon & Zimmerman vs. Lee Lash, 46 Pa Super Ct 89; Theatre curtain: change of nature of house rescinds contract.	1910	Railroad Service vs. Lazell, 200 NY App Div 536, 192 NYS 686; Car cards: unilateral contract for placement.	1922
Norris vs. No-Leako, 271 Fed 536; Piston ring list: valuable advertising medium, subject to protection.	1921	Remick vs. American Auto, 5 Fed (2nd) 411-A-269 US 542; Radio: broadcast is public performance for profit under statute.	1925
Orebaugh vs. Badger, 279 Mass 54, 180 NE 529; Direct mail: part of contract to advertise book to be published.	1932	Remick vs. General Electric, 4 Fed (2nd) 160; Radio: operation of broadcasting not a separate operation, and advertiser is liable for acts and words sent out.	1924
Pacific Railways vs. Conrad, 68 Cal 91, 141 P 916; Outside street car signs: necessity of national distribution.	1914	Schonberg vs. Zinsmaster, 173 Minn 414, 217 NW 491; Flying stunts: liability of advertiser for accident during.	1928
Pacific Railway Advertising Company vs. Lion Clothing, 37 Cal App 387, 174 P 673; Car cards: "end frames," additional value of.	1918	Shuck vs. Carroll, 215 Iowa 1276, 247 NW 813; Newspaper: not a common carrier of advertising.	1933
Pacific Railways vs. Oakland, 98 Cal App 165, 276 P 629; Outside car cards: ordinance forbidding placement upset.	1929	Sorenson vs. Wood, 123 Neb 348, 243 NW 82; Radio: station manager liable for libel like newspaper proprietor.	1932
Paldanius vs. Strauss, 100 Ore 497, 198 P 253; Electric sign: necessity for correct installation.	1921	Sperry & Hutchinson vs. Mechanics, 128 Fed 800-A-135 Fed 833; Trading stamps: ability of issuer to restrict use of.	1904
Patent Hanging Book Cover vs. Marcus, 157 NYS 211; Telephone book cover: sufficient distribution interpreted.	1916	Sperry & Hutchinson vs. O'Neil, Adams Company, 185 Fed 231; Trading stamps: detailed description of procedure.	1911
Pearce vs. Puget Sound Broadcasting Company, 170 Wash 472, 16 (2nd) 843; Radio: Change of wave length grounds for breach of contract.	1932		

Case	Year	Case	Year
Sperry & Hutchinson vs. Temple, 137 Fed 992; Trading stamps: monopoly permitted.	1905	Barron G. Collier vs. Stebbins, 236 Mich 147, 210 NW 264; No evidence of fraud when salesmen secured contract.	1926
Stitt vs. Ward, 142 NY App Div 626, 127 NYS 351; Car cards: parole evidence rule on variation of written contract.	1911	Bonnet Brown vs. Sturtevant, 120 Kan 450, 243 P 1030; Cancellation of first contract, substitution of second invalid.	1926
Technical Radio Laboratories vs. Federal Radio Commission, 36 Fed (2nd) 111, 59 App of D.C. 123; Radio is in interstate commerce.	1929	Cauger vs. Gray, 137 Minn 370, 217 NW 347; Salesman has no authority to purchase car to sell in.	1928
Tribune Company vs. Red Ball Transportation, 84 Ind App 666, 151 NE 338; Newspaper: publication in one edition not full performance.	1926	Colorado Springs vs. American Publishing Company, 97 Fed 843, 38 CCA 433; Publisher relies on apparent authority of advertiser's agent to sign.	1899
United Profit Sharing vs. US, 66 Ct Cl 171; Profit sharing coupons: advertisement to get started is capital expenditure.	1928	Cook vs. Zionist Organization of America, 232 App Div 481, 250 NYS 348; Agent sues for commissions.	1931
Ward vs. American Health Food Company, 119 Wis 12, 96 NW 388; Car cards: placement is not a lease but personal service contract.	1903	Fischer vs. Stephens College, 47 SW (2nd) 1101, N.S.R.; Nature of time salesman's work: liability of employer for injury.	1932
White vs. Shapiro, 227 Fed 957; Advertising Catalogue: subject to copyright.	1915	Fowler vs. Stoner McCray, 196 Ia 452, 193 NW 416; Salesman's right to commission, notwithstanding compromise of claim for value of space after allegation of fraud.	1923
Whitehurst vs. Grimes, 21 Fed (2nd) 787; Radio: broadcasting is interstate commerce.	1927	Freese vs. Pavlowski, 39 RI 512, 99 Atl 13-81; Representative places space in paper not his own.	1916
Witmark vs. Bamberger, 291 Fed 776; Radio: advertising broadcast is public performance for profit.	1923	Gardner vs. Roycrofters, 134 NY App Div 45 -- 197 NY 511, 90 NE 1158; Representative buys title to space, gains property right.	1909
Wood vs. Butterick Publishing Company, 80 NY Misc Rep 534, 141 NYS 509; Catalogue of dress patterns: not substantial performance.	1913	Gilman vs. German Lithographic Stone Company, 152 Ky 606, 153 SW 996; Advertising manager cannot bring action for publisher.	1913
(3) Advertising Media -- Agents of Media			
Barron Collier vs. Braunig Baking, 162 Minn 118, 202 NW 442; Salesmen secured contract by fraud.	1925	Greening vs. Commercial Tribune, 126 Fed 939, 61 CCA 663; Representative's commission due when advertisements ran, not on collection.	1904
Barron G. Collier vs. Davidson-Levine, 294 SW 223, N.S.R.; Solicitor not agent of publisher under the contract.	1927	Harrel vs. Peters Cartridge, 360 Okla 684, 129 P 872; Exhibition sharpshooters who took orders not "doing business."	1913

Case	Year	Case	Year
Hill vs. Philo, 155 NYS 922; Continuing contracts credited to representative's commis- sions.	1915	Taylor vs. Burr Printing, 26 Fed (2nd) 331, 278 US 641; Sale of fraudulent plan to secure classified advertise- ments.	1928
Hopcraft vs. Kittredge, 162 Mass 1, 37 NE 788; Ratification of order taken by salesman.	1894	(4) Advertisers -- Special Classes	
Lewis vs. Sherin, 194 Fed 976; Copywriter contract is per- sonal, and damages for breach is face.	1912	Barton vs. State Bar of Califor- nia, 209 Cal 677, 289 P 818; Attorneys should be permitted to seek business openly and advertise.	1930
Lloyd & Elliot vs. Parke, 112 Conn 504, 152 AEL 825; Acceptance of order given to salesman not shown.	1931	Chenoweth vs. State Board of Medi- cal Examiners, 57 Colo 74, 141 P 132; Physicians have right to ad- vertise decently.	1913
Loeb vs. Star Herald, 187 NY App Div 175, 175 NYS 412; Mere assumption of agency insufficient to permit ser- vice of suit.	1919	Chicago I & L Railroad vs. US, 31 Sup Ct 272, 219 US 486; Railroad cannot exchange transportation for advertising.	1911
McIntyre vs. Hicks, 100 Cal App 531, 280 P 543; Advertisement value may be sued on by deliverer-sales- man as trustee.	1929	Cohen, in re, 261 Mass 484, 159 NE 495; Attorney suspended for adver- tising for divorce cases.	1928
Motion Picture Advertising Ser- vice vs. Modica, 18 La App 647, 139 So 80; Salesman can rely on author- ity of purchasing agent.	1932	Hicks Publishing Company vs. Wis- consin Central Railroad, 138 Wis 584, 120 NW 512; Railroad can exchange adver- tising for transportation if values are equal.	1909
Mullin vs. Sire, 34 NY Misc Rep 540, 69 NYS 953; Agent can rely on authority of hotel manager to buy advertising.	1901	Huggins vs. Commercial and Saving Bank, 141 SC 480, 140 SE 177; Court judicially notices that banks advertise.	1927
Peoples Broadcasting vs. Batten, 231 NY App Div 446, 247 NYS 569; Radio salesman sold rights which he did not have to ad- vertising agency.	1931	Loeb vs. Jacksonville, 101 Fla 298, 134 So 205; City has no right to impose tax to advertise itself.	1931
Philadelphia Record vs. Curtis- Martin, 305 Pa 372, 157 A 796; Newsboys cannot force sale to them of certain newspapers.	1931	Richmond vs. Miller Rubber Com- pany, 142 A 761; Local dealer has no right by custom for advertising al- lowance.	1928
Scott vs. Engineering News Pub- lishing Company, 47 NY App Div 558, 62 NYS 609; Space salesman's commissions do not survive period of em- ployment.	1900	Sacramento vs. Stephens, 212 Cal 607, 299 P 728; Chamber of Commerce has right to advertise city on behalf of local government.	1931
Selah vs. NY Times, 123 NY App Div 510, 108 NYS 562; Contract for salary varying according to space sold in- terpreted.	1908	San Antonio vs. Anderson, 41 SW (2nd) 108, N.S.R.; Government has power to levy tax to pay for advertising of city.	1931
Soloman vs. Light Brothers, 50 NY Misc Rep 541, 99 NYS 540; Power of representative to alter terms of contract orally.	1906	Tarrant vs. Burnett, 134 So 910, N.S.R.; Advertising department of large store (described) has limited power to buy.	1931

Case	Year	Case	Year
(5) Special Service Bureaus		Doll & Smith vs. Boyett, 125 So 760; Cut and engraving service: value of cut not cost of manufacture.	1930
American Manufacturing Company vs. Crittenden Record-Press, 166 Ky 548, 179 SW 456; Contest experts: fraud vitiat contract, parties in pari delicto.	1915	Doollittle vs. Callendar, 88 Neb 747, 130 NW 436; Engraving service: client wants to rescind, damages.	1911
American Manufacturing Company vs. Frey, 180 SW 956; Contest experts: scheme failed, user sues and re- covers.	1915	Goodenough vs. Fuller, 5 NY St R 896; Car card service (called ad- vertising agent): contract breach.	1886
American Publishing & Engraving Company vs. Walker, 87 Mo App 503; Cut and engraving service: contract interpreted.	1901	Green vs. Blair, 31 Fed (2nd) 96; Theatre curtain agency denied personal service classifica- tion.	1929
Barron Collier vs. Domino Maca- roni, 215 Mo App 345, 248 SW 981; Car card service: (see also other Collier cases).	1923	Harrison vs. Turner, 27 Cal App 423, 150 P 395; Contest expert: lack of personal supervision breaches contract.	1915
Beam vs. State, 106 Tex Cr App 341, 292 SW 239; Contest experts: criminal prosecution.	1927	Hass vs. Equity Theatres, 100 Pa Super CT 225; Theatre program agency: dis- tribution found faulty.	1931
Bogota Mercantile vs. Outcault, 184 SW 333; Cut and engraving service: acceptance of offer.	1916	Hellinger vs. Marshall, 92 NY App Div 607, 86 NYS 1051; Engraving service: cuts in- applicable to purpose.	1904
Brenard vs. Brown, 120 Va 757, 92 SE 850; Contest expert: fraud in inducement.	1917	Kaufman vs. Snellenberg, 43 NY Misc Rep 317, 88 NYS 199; Publicity agency: breach of contract to permit advertise- ment placement.	1904
Briggs vs. Mason, 217 Ky 269, 289 SW 295; Advertising specialty: vio- lation of contract not to complete.	1926	Lee Lash vs. Northwest Consoli- dated Milling Company, 218 Fed 910; Lantern slide exchange: breach of contract.	1914
Bry Block vs. Columbia Portrait Company, 219 Fed 710; Premium service: fraud in inducement denied.	1915	Lloyd & Elliot vs. Parke, 112 Conn 504, 152 AEL 825; Cut and engraving service: acceptance of order taken by salesman.	1931
Buster Brown Company vs. Valley Dry Goods, 47 So 549; Cut and engraving service: exclusive service right.	1908	Osborne vs. Franklin Mills, 45 NY App Div 325, 60 NYS 1013; Artists' agency.	1899
Carlton Illustrators vs. American Locomotive Works, 153 NYS 1018, 168 NY App Div 289; Artists contracting to de- liver paintings.	1915	Outcault Advertising Company vs. Bradley, 105 Ark 50, 150 SW 148; Cut and electro service: fraud in the inducement al- leged.	1912
Cauger vs. Gray Motor, 137 Minn 370, 217 NW 347; Film advertising service: agent exceeded authority.	1928	Outcault vs. Jones, 119 Ore 214, 239 P 1113; Cut and electro service: fraud in inducement alleged.	1925
Collins vs. Lawrence Bank, 164 Ark 133, 261 SW 27; General advertising service: booklets, engravings, etc., fee basis.	1924		

Case	Year	Case	Year
Outcault vs. Merchants Bank, 151 Minn 500, 187 NW 514; Cut and electro service: sufficiency of cancellation.	1922	Cleveland Company vs. Standard Amusement, 103 Ohio St 382, 133 NE 615; Gross rate: net rate.	1921
Outcault vs. National Furniture Company, 7 Ga App 150, 66 SE 480; Cut and electro service: breach of contract.	1909	Cream of Wheat vs. Crist, 166 NY App Div 870, 152 NYS 407; Circulation.	1916
Outcault vs. Smalley, 101 Kan 645, 169 P 677; Cut and electro: fraud in inducement.	1917	Dawley vs. Alsdorf, 25 Hun 226; Circulation.	1881
Outcault vs. Young, 110 Ark 123, 161 SW 142; Cut and electro: contract inherently inconsistent.	1913	Dolman vs. Rubber Corporation of America, 109 Cal App 353, 288 P 131; Due bills.	1906
Patten vs. Lynett, 133 NY App Div 746, 118 NYS 185; Free lance editor of special editions of newspapers. Breach.	1907	Ben B. Hampton vs. Schlesinger, 50 NY Misc Rep 522, 99 NYS 522; Short rate.	1906
Retailers Service vs. Smith, 165 SC 238, 163 SE 649; Cut and electro service: counterclaim.	1932	Hand vs. Gas Engine & Power, 167 NY 142, 60 NE 425; Due bill.	1901
Schow Brothers vs. Adva-Talks Company, 232 SW 883, N.S.R.; Electro service: individual use.	1921	Hewitt and Hosier vs. Norman Lichty, 147 Iowa 270, 126 NW 170; Due bill.	1910
Sperry & Hutchinson vs. Mechanics Clothing, 128 Fed 800-A-135 Fed 833; Trading stamps: inalienability enforceable.	1904	Journal Company vs. Simon, 112 Wis 548, 88 NW 580; Circulation.	1902
Sperry & Hutchinson vs. O'Neil, Adams, 185 Fed 231; Trading stamps: breach of contract to use.	1911	Keystone Publishing Company vs. Roman, 116 NYS 654; Due bills.	1909
Sperry & Hutchinson vs. Temple, 137 Fed 992; Trading stamps: monopolistic practices permitted.	1905	Konecky vs. Jewish Press, 288 Fed 179; Distribution and circulation.	1923
Taylor-Critchfield vs. Stuckhart, 275 Ill 129, 113 NE 896; Printer doing advertising business: tax case.	1916	McDermott vs. De Meridor, 80 NJL 67, 76 Atl 331; Short rate: circulation.	1910
(6) Legal Recognition of Advertising Terms and Definitions			
Anglo-London-Paris vs. Johnson, 36 Ariz 549, 288 P 7; Circulation, distribution.	1924	Mail & Times Publishing Company vs. Marks, 125 Iowa 622, 101 NW 458; Due bills.	1904
Brookins vs. National Refining Company, 26 Ohio App 362, 160 NE 97; Commission.	1927	Mooney vs. US Industrial Publishing Company, 27 Ind App 407, 61 NE 607; Circulation.	1901
		Munsey vs. Tadella Pen, 2 NY Ann Cas 371, 38 NYS 159; Gross rate: net rate.	1895
		Nassau vs. Guttridge, 70 NJL 191, 56 Atl 137; Due bills.	1903
		New York News vs. National SS Company, 148 NY 39, 42 NE 514; Due bills: when not honored, obligation for cash arises.	1895
		Pizitz Smolian vs. Weeks, 224 Ala 330, 140 So 442; Card rate: short rate.	1932

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Priscilla Publishing Company vs. Cream of Wheat, 248 Mass 68, 142 NE 753; Circulation.	1924	Kenworthy vs. Stevens, 132 Mass 123; Broker is independent: substantial performance case.	1882
Shopper Publishing Company vs. Skat Company, 90 Conn 317, 97 Atl 317; Due bills.	1916	Lund vs. Smith, 191 Mass 473, 77 NE 893; Advertising agent violates trade mark law.	1906
Snyder International Economist, 91 NYS 748; Due bills.	1905	People ex rel Morse International Agency vs. Cantor, 119 NY Misc Rep 355, 196 NYS 514; Agency not a personal service corporation.	1922
Sperry & Hutchinson vs. Mechanics Clothing Company, 135 Fed 833; Trading stamps.	1904	Savage vs. Drs. K & K Medicine Company, 59 Mich 400, 26 NW 652; Broker dealing in his own name in placing advertisements.	1886
(7) Advertising Agencies -- Historical			
Allen vs. Baus, 54 NY Super Ct 447; Broker owned space to be assigned by endorsement to advertiser.	1887	(8) Advertising Agents -- Modern Cases	
Allen vs. Pierpont, 22 Fed 582; Broker held to be an agent.	1884	All Church Press vs. Harris Advertising Agency, 36 Ga App 616, 138 SE 85; Unilateral contract between agency and publisher.	1927
Alling vs. Trevor, 25 NY Misc Rep 390, 54 NYS 772; Broker made inseverable contract, and did not fully perform.	1898	All-Package Grocery vs. McAtamney, 174 NY App Div 778, 161 NYS 622; Agency publishing house organ: guilty of conversion.	1916
Clegg vs. NY Newspaper Union, 72 Hun 395, 25 NYS 566; Broker as independent contractor.	1876	Armstrong vs. McCaughn, 21 Fed (2nd) 636; Personal service classification of agency for taxes.	1927
Green's Advertising Agency vs. Blair, 31 Fed (2nd) 96; Theatre Curtain agency owns space before selling to clients.	1929	Ayer vs. Devlin, 179 Mich 81, 146 NW 257; Agency sues to recover on contract for advertising.	1914
Hampton vs. Schlesinger, 50 NY Misc Rep 539, 99 NYS 522; Independent broker held space for use of advertiser in own name.	1906	Ayer vs. Rubber, 282 Pa 404, 126 A 103; Agency sues when advertiser changes agency, and transfers contracts.	1925
Hewitt and Hosier vs. Norman Lichty, 147 Iowa 270, 126 NW 170; Broker in breach of duty as agent.	1910	Barton & Spooner vs. Gray, 121 NYS 314; Agency sues advertiser under contract after payment to publisher.	1910
Hofflin vs. Moss, 14 CCA 459, 67 Fed 440; Broker in breach of duty as agent.	1895	Blumenstock vs. Curtis, 252 US 436, 40 Sup Ct 385; Advertising contracts not in interstate commerce.	1920
Holloway vs. Stephens, 2 Thomp & C 658; Broker contract where performance was insufficient.	1874	Campbell-Moss-Johnston vs. Lupton, 290 SW 992-A-155 Tenn 93, 1 SW (2nd) 783; Agency definition of "doing business."	1927
Hubbard vs. Rowell, 51 Conn 423; Publisher knew broker would resell space.	1883	Clarke vs. Watt, 83 NY Misc Rep 404, 145 NYS 145; Agency fails to pay publisher: advertiser held.	1913

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Dolman vs. Rubber Corporation of America, 109 Cal App 353, 288 P 131; Agency misunderstood due bill plan.	1930	H. K. McCann vs. Denny, 205 Cal 147, 270 P 190; Advertiser owes agency when agency pays bills before payment to agency by advertiser. Agency is agent at law.	1928
Dorrance Sullivan vs. Bright Star, 227 NYS 675-R-249 NY 593, 164 NE 596; Advertiser changes agencies: employment contract discussed.	1928	Massengale, appeal of, 2 B.T.A. 26; Personal service classification granted by Board of Tax appeals.	1925
Freese vs. Pavlovski, 39 RI 512, 99 Atl 13-81; Representative acting as advertising agent.	1916	Miers vs. C. H. Fuller, 167 Ill App 49; Agency which uses its own credit can sue in its own name.	1911
Fuller & Smith vs. Routzahn, 23 Fed (2nd) 969; Agency is personal service corporation.	1927	Montague vs. All-Package, 182 NY App Div 500, 169 NYS 920; Agency has authority to bind credit of advertiser.	1918
Green's Advertising Agency vs. Blair, 31 Fed (2nd) 96; Theatre curtain agency not personal service corporation.	1929	People ex rel Morse International vs. Cantor, 119 NY Misc Rep 355, 196 NYS 514; Agency which owned space denied personal service classification.	1922
Hoffman vs. American Tobacco, 148 NYS 151; Agent appoints subagent, whose authority is denied.	1914	Munsey vs. Tadella, 2 NY Ann Cas 371, 38 NYS 159; Contract includes provision for payment of agency.	1895
Huber Hoge vs. Smith & Wesson, 32 Fed (2nd) 699, 280 US 586; Agency not allowed commissions on estimate prepared, after shift to another agency.	1929	NY Evening Journal vs. Simpson, 106 NYS 858-A-110 NYS 391; Placing advertisements in newspapers from accounts controlled is legal consideration.	1908
Irwin, Keelan (etc.) vs. Tracy, 294 Pa 503, 144 Atl 525; Founder liable to agency through incorporation and dissolution of corporation.	1928	Newell vs. National Advertising Company, 39 Colo 295, 89 P 792; Publisher sues agency although agency is not paid by advertiser.	1907
Kaden vs. Moon, 26 SW (2nd) 812, N.S.R.; Agency called a legal agent.	1930	O'Shaughnessy vs. Shaw, 206 NY App Div 458, 201 NYS 472; Advertising agency employed by sales agent of foreign concern not liable.	1923
Kastor vs. Elders, 170 Mo App 490, 156 SW 737; Lowest rate in agency contract means gross rate. Descriptive case.	1913	Peoples Broadcasting Company vs. Batten, 231 NY App Div 446, 247 NYS 569; Contract between agency employee not authorized to contract and radio salesman who could not deliver time.	1931
Kaufman vs. Snellenburg, 43 NY Misc Rep 317, 88 NYS 199; Agency placing publicity for "prestige."	1904	Potts-Turnbull vs. US, 68 Ct Cl 701, 37 Fed (2nd) 703; Agency held a personal service corporation in Court of Claims.	1930
Lund vs. Smith, 191 Mass 473, 77 NE 893; Agency in difficulties with trademarks.	1906	Presbrey vs. Miller, 65 NY Misc Rep 52, 119 NYS 192; Agency not inherently authorized to change copy of advertisements.	1909
McCann Advertising Agency vs. Commissioner of Internal Revenue, 14 B.T.A. 234; Board of Tax Appeals granted personal service classification.	1928		

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Rankin vs. Associated Bill Posters of US and Canada, 260 US 501-R-271 Fed 140; Poster plants in combination in restraint of trade.	1923	Butterick vs. Federal Trade Commission, 4 Fed (2nd) 910; Words of agency ignored, when real purpose is outright sale.	1925
Rosenbaum vs. Sarasohn, 184 NY App Div 204, 171 NYS 629; Agency in dual function: advertising and sales.	1910	Buyers Index vs. Schneider, 152 Ill App 238; South American agent places advertisement and offers services as salesman.	1909
Seelye & Brown vs. Journal, 224 Mich 481, 195 NW 69; Agency and publisher acting as joint contractors.	1923	Calhoun vs. Buhre, 67 Atl 1068, N.S.R.; Hotel manager has authority to sign for advertisement reasonable in amount.	1907
Service vs. Goodnow Pearson, 242 Mass 594, 136 NE 623; Agency direct mail work unsatisfactory.	1922	Cauger vs. Gray Motor, 137 Minn 370, 217 NW 347; Space salesman has no authority to buy automobile and pay for it with advertising.	1928
Simms vs. Massengale Agency, 24 Ga App 182, 100 SE 235; Agency guaranteed credit of advertiser: valid for all publishers.	1919	Colorado Springs vs. American Publishing Company, 97 Fed 843, 38 CCA 433; Authority of secretary to bind corporation for advertising.	1899
State vs. J. P. Bass, 104 Me 288, 71 Atl 894; Illegal advertisements placed by agency are advertiser's responsibility.	1908	Continental Oil Company vs. Baxter, 59 SW (2nd) 463, N.S.R.; District superintendent cannot bind oil company for radio contract.	1933
Williams vs. Finlaw Mueller, 292 Pa 244, 141 Atl 47; Trustee relation of principal and agent. (Non-advertising case.)	1928	Daily Telegram vs. Ocean View Oil, 65 Cal App 508, 224 P 1006; Authority of fiscal agent to hire advertising agency.	1924
(9) Miscellaneous Agents Who Place Advertising			
Beck vs. Donohue, 27 NY Misc Rep 230, 57 NYS 741; Liquor salesman could not take wall space to pay for liquor.	1899	Duluth New Tribune Company vs. Smith, 169 Minn 337, 211 NW 322; Selling agent has power to advertise within reason.	1926
Bowman Realty vs. Moss, 143 SW 765; Reporter paid to insert publicity, contract not against public policy.	1912	Elmendorf vs. Mulliken, 231 SW 164, N.S.R.; Partners in stock selling scheme advertise. Held liable.	1921
Brooklyn Daily Eagle vs. Dellmar, 30 NY Misc Rep 747, 62 NYS 1041; Salesman has no authority to bind company to advertising contract.	1900	Express Publishing Company vs. Perry, 10 SW (2nd) 574, N.S.R.; Office and credit manager has authority to make trade in kind.	1928
Browne-Brun vs. Hinton, 179 Ark 831, 18 SW (2nd) 369; Assistant manager paid to advertise company, question of conversion.	1929	Fowler vs. Stoner McCray, 196 Ia 452, 193 NW 416; Outdoor advertising agent obtains valid group promise notwithstanding allegation of fraud.	1923
Bussing vs. Lowell, 233 NY App Div 471, 253 NYS 719; Former president cannot bind corporation for advertising even if removal is not announced, especially when there is evidence of bad faith.	1931	Goodenough vs. Fuller, 5 NY St R 896; Early car card agency case. Performance in question.	1886

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Kavsky vs. Harris, 102 NJL 371, 132 A 750; Fraud of agent vitiates contract of principal when advertising is false.	1926	Tarpy vs. Burnheimer, 16 NYS 870; Sales and collection agent not authorized to incur advertising bill.	1892
Long-Costello vs. Rider, 7 SW (2nd) 387, N.S.R.; Ford agent induced dealers to buy direct mail pieces.	1928	Tribune vs. Wendell, 192 Ill App 639; Contract named agent as advertiser, although mentioned existence of principal.	1915
McIntyre vs. Hicks, 100 Cal App 531, 280 P 543; Newspaper route agent who took advertisements could sue in his own name.	1929	Walling vs. Wainscott, 152 Ky 365, 153 SW 453; Sales agent must protest advertising campaign for his benefit unless satisfactory.	1912
Masline vs. New York, New Haven & Hartford Railroad, 95 Conn 702, 112 Atl 639; Employee tries to sell idea that defendant should advertise.	1921	World Oil vs. Hicks, 19 SW (2nd) 605, N.S.R.; Broker must perform contract to advertise and sell to recover.	1929
Motion Picture Advertising Service vs. Modica, 18 La App 647, 139 So 80; Wife of store keeper as manager has authority for advertising contract.	1932	(10) Advertising Contracts -- Performance or breach	
Mullin vs. Sire, 34 NY Misc Rep 540, 69 NYS 953; Manager of hotel has authority for small advertising contract.	1901	Ahern vs. Standard Life Insurance, 32 NY Super Ct 441; Dispute on "till forbid" clause.	1870
Palmer vs. Fix, 104 Cal App 562, 286 P 498; Sales agent with advertising powers failed to submit advertisements for approval.	1930	Alling vs. Trevor, 25 NY Misc Rep 390, 54 NYS 772; Entire contract not performed in full.	1898
Pulpwood Company vs. Green Bay Paper, 168 Wis 400, 170 NW 230; Purchasing agent for two principals not unlawful. (non-advertising)	1918	Ambro vs. Speedway Manufacturing Company, 211 Ia 276, 233 NW 499; Failure to comply with corporate registration does not affect validity of advertising contract.	1930
Richardson vs. Argos Mercantile, 182 NYS 89; Authority to contract for advertising granted over telephone.	1920	Barron Collier vs. Domino, 215 Mo App 345, 248 SW 981; Publisher need not minimize damages for breach by resale of space.	1923
Russel vs. Weiler, 28 Ohio Cir Ct R 176; Circulars sent by stock salesman evidence of stock fraud.	1905	Barron G. Collier vs. Women's Garment, 152 Minn 475, 189 NW 403; Publisher must take other advertisers' offers to replace breached contract.	1922
St. Louis Gunning vs. Wanamaker, 115 Mo App 270, 90 SW 737; Sales agency not authorized to contract for outdoor display.	1905	Beckwith vs. American Toy and Novelty, 188 NYS 877; Order for advertising must be accepted to become contract.	1921
Swinehart Tire vs. Broadway Tire, 44 RI 253, 116 A 755; Sales agent not entitled to advertising allowance without submission of advertisements by terms of contract.	1922	Baltinck vs. Tacoma Theatre, 61 Wash 132, 111 P 1045; Delayed payments not estoppel from rescission for breach.	1910
		Bosch vs. Rushmore, 255 Fed 465, 248 US 584; Breach of contract to use inventor's name.	1918

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Bowles Livestock vs. Chicago Live Stock, 243 Ill App 71; Breach of radio contract allowed when exchange rules forbade.	1920	Cohn vs. Tanner, 163 App Div 883, 147 NYS 574; No breach of display contract unless material is supplied.	1914
Brackett vs. Knowlton, 109 Me 43, 82 A 436; Payment for advertising contract due under its terms when owner died.	1912	Collins vs. Lawrence County Bank, 164 Ark 133, 261 SW 27; Advertising service contract one and entire in breach.	1924
Browne vs. Sharkey, 58 Ore 480, 115 P 156; Performance delayed too long, contract properly rescinded.	1911	Cunningham vs. Cohen, 14 NY Misc Rep 12, 35 NYS 125; Display of car cards held one and entire and in breach.	1895
Bryan vs. Shadow, 133 So 500, N.S.R.; Oral contract extended without authority.	1931	Dake vs. Patterson, 5 Hun (NY) 558; Contract to publish for a term needs no notice to terminate.	1875
Burr vs. American Spiral Spring, 81 NY 175; Performance of distribution in question.	1880	Dauchey vs. Drake, 85 NY 407; Not substantial performance of contract to syndicate advertisements.	1881
Butcher's Advocate vs. Berkhof, 94 NY Misc Rep 299, 158 NYS 160; Interpretation of contract as severable.	1916	Druggists Circular vs. American Soda Fountain Company, 240 Mass 531, 134 NE 384; Space contract more than reservation of space. Profits are damages.	1922
Butler vs. Mail & Express Company, 54 App Div 382, 66 NYS 788; Performance of publication.	1900	Eastern Advertising Company vs. E. L. Patch, 235 Mass 580, 127 NE 516; Salesman had no authority to alter printed contract.	1920
Buyers Index vs. Schneider Western, 152 Ill App 238; Performance of publication but not services connected therewith.	1909	Eisenlohr vs. Swain, 35 Pa St Rep 107; Damage for non-publication when prepaid is amount paid.	1860
Call Publishing Company vs. Edison, 55 Neb 394, 75 NY 837; Part use of lines contracted for. Liability for those used.	1898	Feree vs. Mouquin (etc.), 29 NY Misc Rep 624, 61 NYS 120; Interpretation of cancellation clause.	1899
Cauger vs. Gray Motor, 137 Minn 370, 217 NW 347; Contract made by unauthorized agent not enforceable.	1928	Ferree vs. Wilson, 19 NYS 209; Permissible to cease publication of term contract on default of payment.	1892
Chase vs. 2nd Avenue Railway, 97 NY 384, 49 Am Rep 531; Contract in violation of statute of Frauds not enforceable.	1884	Glass vs. Garber, 55 Ind 336; Damage for non-publication may be more than nominal.	1876
Class Journal vs. Valveless Inner Tube, 134 NYS 916; Interpretation of contract calling for advertiser's approval of copy.	1912	Goddard vs. American Queen, 44 NY App Div 454, 61 NYS 133; Non-competitive clause breached, and postal regulations were no excuse.	1899
Cleveland vs. Standard Amusement Company, 13 Ohio St 382, 133 NE 616; Term rate is valuable consideration, and short rate chargeable for amount actually used when term contract is breached.	1921	Hand vs. Brooks, 21 NY App Div 489, 47 NYS 583; Breach of contract calling for tender of goods in payment.	1897

Case	Year
Hand vs. Shaw, 27 NY App Div 107, 50 NYS 117; Interpretation of intent in size of order of goods to pay for advertisement.	1898
Hass vs. Equity Theatres, 100 Pa Super Ct 225; Breach of distribution covenant.	1931
Haverty vs. Lyon-Young, 37 Ga App 263, 139 SE 921; Following All Church Press vs. Harris.	1927
Haynes vs. Nye, 185 Mass 507, 70 NE 932; Contract for advertising space breached before performance began.	1904
Hopcraft vs. Kittredge, 162 Mass 1, 37 NE 768; Contract breached by non-acceptance of counter cards.	1894
Horowitz vs. Syndicate Mail Order, 166 NYS 809; Assent to delay is waiver of condition.	1917
House of Gurney vs. Ronan, 187 Minn 150, 245 NW 30; Breach of contract to pay fee for broadcast. Fee to be based on purchases.	1932
Humphreys vs. Williams, 70 NY Misc Rep 354, 128 NYS 680; Space contract "till forbid" is binding until cancellation.	1911
Ibbotson vs. Sherman, 42 NY Super Ct 477; Not substantial performance of broker contract.	1877
Imperial Curtain vs. Strauss, 76 NY Misc Rep 533, 135 NYS 577; Theatre curtain contract not cancellable.	1912
Ingalls vs. Burlingame, 71 NH 19, 51 Atl 175; Newspaper sold to another; advertising contract assigned; held valid. Notice to cancel to former proprietor invalid.	1901
Jackson vs. Adams, 9 Mass 484; Printer liable for immediate damages from misprint.	1813
Johns-Manville vs. Lovell McConnell, 212 Fed 923; Cancellation clause based on competing manufacturers' advertisements.	1914

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Kansas City Star vs. Standard Warehouse, 123 Mo App 13, 99 SW 765; Advertisements must be paid for although sale of subject was not lawful.	1907
Keniston vs. Flaherty, 101 NY App Div 605, 91 NYS 568; Contract breached by advertiser's failure to supply copy.	1905
Keystone Publishing Company vs. Roman, 116 NYS 654; Publishers had to show purchases by customers to recover.	1909
Lee Lash vs. Toledo Transfer, 25 Ohio App 325, 158 NE 15; Notice of cancellation requires cessation of performance.	1927
Lerner vs. Roth, 136 NYS 61; Performance of contract to show advertising drop.	1912
Lloyd & Elliot vs. Parke, 112 Conn 504, 152 A 825; No evidence of acceptance of order given to salesman, no contract.	1931
Lucas vs. Gross Motor, 32 Ohio App 183, 161 NE 362; Contract for outdoor advertising assigned without breach.	1927
McDermot vs. De Meridor Company, 80 NJL 67, 76 Atl 331; Damages are <i>prima facie</i> on face of advertising contract after breach.	1910
McKillop Walker vs. NY Preparatory School, 91 NYS 338; Advertisements run must be paid for.	1904
MacCallus Print vs. Graphite Compendium, 150 Mo App 383, 130 SW 836; Contract for all future business, similar to option. Valid.	1910
Mail & Express vs. Marks, 125 Iowa 622, 101 NW 458; Under contract plaintiff may take payment in pianos but not cash.	1904
Mail & Express vs. Wood, 140 Mich 505, 103 NW 864; Fraud must be alleged in pleadings. Advertiser has right to say when the advertising starts.	1926

Case	Year
Marcus vs. Meyers, 11 Times L R 327 (Queens Bench); Damages granted for failure to publish.	1895
Marks vs. Churchill's, 90 NY Misc Rep 370, 153 NYS 264; Performance of contract made impossible by war excused.	1915
Marks vs. Hermitage, 170 NY App Div 484, 156 NYS 179; Performance of contract made impossible by war excused.	1915
May vs. Crawford, 150 Mo 504, 51 SW 693; Breach of condition of authenticity of goods advertised.	1899
Mendell vs. Willyoung, 42 NY Misc Rep 210, 85 NYS 647; Publication is acceptance of order to publish.	1903
Mertins vs. Hubbel, 190 Ala 311, 67 So 275; Value of advertisement has no bearing on duty to pay publisher.	1914
Miller vs. Glockner, 1 Ohio App 149; Condition of advertiser to control policy of newspaper against public policy.	1913
Miller vs. Moir, 190 Ill App 32; Contract to advertise and sell one kind of beer interpreted.	1914
Mooney vs. US Industrial Publishing Company, 27 Ind App 407, 61 NE 607; Circulation condition precedent of liability.	1901
Morgenthaler vs. Krieg, 101 Cal App 436, 281 P 692; Cancellation under contract of advertising device.	1929
Motion Picture vs. Capelle, 137 So 877, N.S.R.; Alteration in contract unintelligible. Original enforced.	1931
Motion Picture vs. Wallace, 180 NYS 937-A-186 NYS 80; Cancellation based on return of catalogue not enforceable.	1921
Nassau vs. Guttridge, 70 NJL 191, 56 Atl 137; Publisher was to supply customers as part of contract.	1903

Case	Year
National Garment vs. Seidel, 185 NYS 865; Printed contract altered without authority by publisher. Void.	1921
National Railways vs. Breece, 143 Ark 292, 220 SW 48; Ambiguous contract explained by parole. Alteration avoids it.	1920
New Publication vs. Stern, 194 App Div 170, 127 NYS 393; Publisher can halt publication at will on delay in payments.	1911
New York News vs. National Steamship Company, 148 NY 39, 42 NE 514; Refusal to pay in kind, converts obligation to pay in cash.	1895
News Publishing Company vs. Barrett, 127 So 749, N.S.R.; One year and "till forbid" contract interpreted.	1930
News Syndicate vs. Wolf, 136 NY Misc Rep 483, 241 NYS 403; Terms of contract subject to change. Not void for ambiguity.	1930
Nicholl vs. NY Boat Oar Company, 15 NY Misc Rep 143, 36 NYS 467; Contract to publish in catalogue not performed by publisher in another catalogue at some later time.	1895
Nixon & Zimmerman vs. Lee Lash, 46 Pa Super Ct 59; Theatre curtain contract not performed when theatre changed nature.	1910
Noel vs. Evening Post, 199 Ky 437, 251 SW 189; Computation added in pencil not alteration of contract.	1923
North Side News vs. Cypress, 75 NY Misc Rep 129, 132 NYS 806; Acceptance of order by publisher implies mutual contract.	1912
Official Catalogue vs. American Car Advertising Company, 120 Mo App 575, 97 SW 231; Publisher may not augment damages after breach.	1906
Orebaugh vs. Badger, 279 Mass 54, 180 NE 529; Publisher inexcusably slow to publish book.	1932

Case	Year
Patent Hanging Book vs. Marcus, 157 NYS 211; Breach of condition of distribution.	1916
Pearce vs. Puget Sound Broadcasting Company, 170 Wash 472, 16 Pac (2nd) 843; Change of wave length grounds for breach of contract.	1932
Peck vs. Kansas City Metal Roof, 46 Mo App 212, 70 SW 169; Refusal to supply copy is breach and publication should be halted.	1902
Penniman vs. Lagrange, 23 NY Misc 653, 52 NYS 27; Delayed payment is breach. Recovery had on instalments.	1898
Penton vs. American Oil & Refining Company, 178 NYS 371; Contract to supply copy breached. Publisher supplies and recovers.	1919
Periodical Press vs. Elliot, 143 Minn 489, 174 NW 516; Measure of damages for non-acceptance of booklets.	1919
Phelps vs. LaSalle, 209 Ill App 430; Damages prima facie face of contract. Acceptance makes mutual contract.	1918
Phillips vs. Kastons, 188 NYS 121; Cancellation provisions must be strictly adhered to.	1921
Piretti vs. Firestone, 120 NYS 782; Contract cannot be altered orally under parole evidence rule.	1910
Pizitz-Smolian vs. Meeks, 224 Ala 330, 140 So 442; Contract indefinite and wanting in mutuality.	1932
Post vs. Frank, SP 75 NY Misc Rep 130, 132 NYS 807; Definition of binding bilateral advertising contract.	1912
Pratt vs. Montegriffo, 57 Hun 587, 1890 10 NYS 903; Violation of condition to advertise opera star with equal prominence.	1890
Presbrey vs. Miller, 65 NY Misc Rep 52, 119 NYS 192; Contract modified by agent without permission is invalid.	1909

Case	Year
Press Publishing Company vs. Ehrich, 135 NY App Div 533, 120 NYS 363; Pool agreement interpreted.	1909
Pulitzer Publishing Company vs. McNichols, 170 Mo App 709, 153 SW 562-A-181 SW 1; When all space is not used, publisher may collect card rate.	1913
Railway Advertising Company vs. Possner, 35 NY Misc Rep 385, 71 NYS 742; Interpretation of cancellation clause.	1901
Railroad Service vs. Lazell, 200 NY App Div 536, 192 NYS 686; Order accepted to place cards, but not mutual contract.	1922
Realty Advertising Company vs. Englebert Tire, 89 NY Misc Rep 371, 151 NYS 885; Contract providing liberal cancellation terms.	1919
Rishel vs. Stuyvesant, 123 NY Misc Rep 208, 204 NYS 659; Damages for breach of personal service contract.	1924
Robert vs. Grein, 129 NY Misc Rep 406, 221 NYS 321; Interpretation of "every eighth page."	1927
Shopper Publishing Company vs. Skat, 90 Conn 317, 97 Atl 317; When error of damages is immaterial, verdict will stand.	1916
Smith vs. Lanever, 169 Ark 1212, 278 SW 178-R-261 SW 48; Clause making all instalments payable on first default valid.	1925
Springfield vs. Dunn, 12 Ga App 8, 76 SE 644; Performance when halted by injunction excused.	1912
Star Publishing Company vs. Krosher, 62 Wash 215, 113 P 569; Publisher can reserve space for advertiser and charge although not used.	1911
Stumpf vs. Merz, 50 NY Misc Rep 543, 99 NYS 337; Damages cannot be reduced after breach by insertion in same location of another advertisement.	1906

Case	Year
Tradesman vs. Superior, 147 Mich 702, 111 NW 343; Measure of damages is the face price of the contract.	1907
Tribune vs. Bradshaw, 20 Ill App 17; Plaintiff claims irreparable damages for non-publication of advertisements.	1886
Tribune vs. McCarthy, 201 Ill App 586; Evidence admitted to show admission of liability on advertising contract.	1916
Tribune vs. Red Ball, 84 Ind App 666, 151 NE 338; Single edition of paper does not mean full publication.	1926
Walling vs. Wainscott, 152 Ky 365, 153 SW 453; Contract with advertiser for benefit of agent performed.	1913
Wasilewski vs. Wendell, 9 NY St Rep 508; Insertion of advertisement after term of contract gives publisher no rights.	1887
Weiss vs. Price, 186 Iowa 640, 172 NW 939; Acceptance of advertised offer creates a contract which binds.	1919
White vs. Allen Kingston, 69 NY Misc Rep 627, 126 NYS 150; Advertiser can be held under contract only for insertions run.	1910
Wood vs. Butterick, 80 NY Misc Rep 554, 141 NYS 509; Substantial performance must be virtually complete.	1913
(11) Advertising Contracts -- Fraud in the Inducement	
American Copying Company vs. Lehman, 6 Cal App 1, 91 P 414; Fraud in obtaining trading stamp contract.	1907
American Travel & Hotel vs. Curtis, 236 Ill App 236; Misleading circular signed, held to be fraudulently procured.	1925
American Travel & Hotel vs. Roycrofters, 125 NY Misc Rep 853, 213 NYS 42; Misleading circular held to be fraudulent and to vitiate contract.	1925

Case	Year
American Travel & Hotel vs. Van Blerkom, 216 App Div 28, 214 NYS 753; Same circular apparently as above not fraudulent.	1926
Baedecker vs. Hamtramck, 257 Mich 435, 241 NW 249; Tricky circular held to be fraudulent. Contract invalid.	1932
Barron G. Collier vs. Braunig, 162 Minn 181, 202 NW 442; Statement that there was a waiting list for space was fraud.	1925
Barron G. Collier vs. Davidson-Levine, 294 SW 223, N.S.R.; Agent accepted cancellation when not authorized. Advertiser pays.	1927
Barron G. Collier vs. Stebbins, 236 Mich 147, 210 NW 264; False statement no excuse for one who deals.	1926
Brenard vs. Brown, 120 Va 757, 92 SE 850; Fraud in inducement of advertising contest.	1917
Bry Block vs. Columbia Portrait, 219 Fed 710; Lie as to novelty of advertising scheme held to be fraud.	1915
Caperton vs. Clark, 203 Ky 191, 261 SW 1098; Fraudulent advertisement immaterial unless plaintiff saw it.	1924
Continental Insurance Company vs. Equitable Trust, 127 NY Misc Rep 45, 215 NYS 281-7; Public false representations may sustain rescission.	1926
International Transportation Association vs. Bylenga, 254 Mich 236, 236 NW 771; Fraud in set up of circular held no meeting of minds.	1931
International Transportation Association vs. Blakeslee, 225 NY App Div 229, 232 NYS 508; Parties dealing at arms length must show reliance to prove fraud.	1929
Manufacturer's Record vs. Holton, 22 Pa Super Ct 120; Trade puffing will not support allegation of fraud.	1902

Case	Year	Case	Year
Shallercross vs. Brown, 185 SW 745, N. S. R.; Fraud proved on misstatement of circulation.	1916	Humphreys Manufacturing Company vs. Williams, 70 NY Misc Rep 354, 128 NYS 680; Space contract may be specifically enforced.	1911
Taylor vs. Burr Printing Company, 278 US 341, 26 Fed (2nd) 331; Fraud in securing entrance to interview and authority of plaintiff for statements vitiates contract.	1928	Konecky vs. Jewish Press, 288 Fed 179; Circulation of newspaper is interstate commerce, but this does not permit action in restraint of trade in federal courts.	1923
(12) Advertising Contracts -- Special Nature of			
Advertiser Company vs. State, 69 So 501, N.S.R.; Liquor contract subsequently made unlawful is avoided.	1915	Mack vs. Costello, 32 So Dak 511, 143 NW 150; Newspaper may refuse to publish advertisements capriciously.	1913
Amalgamated Furniture Companies vs. Rochester Times-Union, 128 NY Misc Rep 673, 219 NYS 705; Publisher has right and duty to refuse fraudulent advertising.	1927	Mail and Express vs. Hamilton, 120 NY Misc Rep 604, 217 NYS 284-R-220 NYS 886; Consolidation of papers not necessarily breach of performance.	1927
American Lithographing Company vs. Ziegler, 216 Mass 287; Performance of advertising contract not assignable, but rights are.	1914	Marcus vs. Meyers, 11 Times L R 327 (Q.B.Div); Damages awarded for loss of trade caused by breach of contract.	1895
American University vs. Wood, 294 Ill 186, 128 NE 530; Fraud in removal of mailing lists. Parties in pari delicto.	1920	Official Catalogue vs. Weber, 109 SW 1071, N.S.R.; For an advertisement to be an offer, it must have all elements of a contract.	1908
California Fireproof vs. Brundige, 199 Cal 185, 248 P 669; Advertising facilities of a utility are subject to control.	1926	Pierson vs. Morch, 82 NYS 503; Offer of a reward is legally an offer.	1890
Commonwealth vs. Boston Transcript, 249 Mass 477; Newspaper not common carriers of advertising, nor can they be compelled to publish proceedings of labor board.	1924	Sanka Coffee vs. Broadway, 221 NY App Div 579, 224 NYS 514; Specific performance is not remedy for contract to place car cards.	1927
Federal Sign System vs. Palmer, 176 NYS 565; Electric sign darkened by war order. Damages awarded.	1919	State vs. Union Pacific Railway, 19 Cal App 581; Advertising may not be exchanged for transportation.	1910
Heathcote vs. Curtis, 229 Mass 569, 118 NE 909; Publisher's recommendation of advertisements not a guarantee.	1918	Louis Wohl, in re, 50 Fed (2nd) 254; Newspaper not clothed with public interest, cannot be forced to insert advertisements. Demand for back bankrupt debt not illegal exaction.	1931
Hicks Publishing Company vs. Wisconsin Central Railroad, 138 Wis 584, 120 NW 512; Contract to exchange advertising for transportation.	1909	(13) Tortious Advertising -- Common Law	
		Abrams vs. Jones, 35 Ida 532, 207 P 724; Dentist advertises fraudulently.	1922

Case	Year	Case	Year
Adriance vs. National Harrow, 58 CCA 163, 121 Fed 827; Bad faith in circulars sent to trade alleging infringement of patent.	1903	Burnstine, in re, 169 App Div 540, 155 NYS 500; Attorney who gave false receipt for advertising purposes censured.	1915
Alpine vs. Friend, 244 Mass 164, 138 NE 553; Accidental tin shard in bread not proof of fraudulent advertisement.	1923	Chenoweth vs. State Board of Medical Examiners, 57 Colo 74, 141 P 132; Doctors should be allowed to advertise decently.	1913
Amalgamated Furniture Companies vs. Rochester Times-Union, 128 NY Misc Rep 673, 219 NYS 705; Publisher has duty not to publish fraudulent advertising.	1927	Cohen, in re, 261 Mass 484, 159 NE 495; Suspension of attorney for advertising for divorce actions.	1928
American University vs. Wood, 294 Ill 186, 128 NE 530; Parties competing unfairly with advertisements are in pari delicto when both publish fraudulent advertisements.	1920	Commonwealth vs. Allison, 227 Mass 57, 116 NE 265; Advertising contraceptives indecent and within the police power.	1927
Arcoil vs. Jacobson, 147 Atl 739, N.S.R.; Manufacturer cannot interfere with business of dealer by advertisements.	1929	Commonwealth vs. Hartford, 193 Mass 464, 79 NE 784; Advertising for abortions is solicitation to commit a crime.	1907
Atkinson vs. Doherty, 121 Mich 372, 80 NW 285; Right of privacy denied. Cigar band case.	1899	Dare vs. Foy, 180 Iowa 1156, 164 NW 179; Unfair competition in advertising after sale of goodwill.	1917
Barton vs. State Bar Association of California, 209 Cal 677, 289 P 818; Lawyers should be allowed to advertise.	1930	Diamond Crystal Salt vs. Worcester Salt, 221 Fed 66; No locus penitentie of false national advertising.	1915
Beebe vs. Tollerton, 117 Iowa 593, 91 NW 905; Innocent use of counterfeit cigar labels and bands.	1902	Dimick vs. Snyder, 34 SW (2nd) 1004, N.S.R.; Outdoor advertising contract within statute of frauds.	1931
Bowman Realty vs. Moss, 147 Ky 103, 143 SW 765; Not against public policy to insert news items for advertising, and to pay for such insertion.	1912	Doran vs. State Board of Medical Examiners, 78 Colo 153, 240 P 335; Fraudulent medical advertising.	1925
Bradenburg vs. NW Jobbers Credit, 128 Minn 411, 151 NW 134; Advertisement of goods without sale or other act of dominion is not conversion, when the advertising was mere mistake.	1915	Dumore vs. Richards, 52 Fed (2nd) 311; Unfair competition in use of name and advertising.	1930
Brooks vs. Patterson, 234 Ky 757, 29 SW (2nd) 26; Advertising of price of store not authorized by owner not libel.	1930	Edison vs. Polyform, 73 NJE 136, 67 Atl 392; Name of famous person can be protected from incorrect use.	1907
		Edison vs. Mills-Edisonia, 74 NJE 521, 70 Atl 191; Right to use exhibition machines is right to advertise inventor.	1908
		Elliot vs. Jones, 66 NY Misc Rep 95, 120 NYS 989; Competitor trading on advertisements and built-up name.	1910

Case	Year	Case	Year
Ellis vs. Hurst, 70 NY Misc Rep 122-A-128 NYS 144-A-130 NYS 1110; Nom de plume entitled to no greater and no less protection than true name.	1910	Howe Scale vs. Wyckoff, 198 US 118, 25 Sup Ct 609; Family name cannot be enjoined in advertisements unless used for fraud.	1905
Poster Millburn vs. Chinn, 134 Ky 424, 120 SW 364; Worthless pills advertised by forged letter. Recovery granted.	1909	Hughes vs. State Board of Medical Examiners, 162 Ga 246, 134 SE 42; Prohibition of physicians' advertisements when indecent permitted under police power of the state.	1926
Fox vs. Best Baking, 209 Mass 251, 95 NE 747; Unfair competition in sale of bread.	1911	Insurance Press vs. Ford Motor, 255 Fed 896; Plagiarism of article published, as mailing piece, minimum damages.	1918
Fox Film vs. Federal Trade Commission, 296 Fed 353; Old films advertised as new is unfair competition.	1924	International Heater vs. Oliver, 288 Fed 708-A-263 US 714; Exclusive right to confidential information must be shown before the use can be enjoined.	1923
Georgian vs. Bloom, 27 Ga App 468, 108 SE 813; Error in publication of advertisement does not require sale at that price.	1921	Kansas City Star vs. Standard Warehouse, 123 Mo App 13, 99 SW 765; Advertising of land bought outside corporate charter powers.	1907
Goldsmith vs. Jewish Press, 118 NY Misc Rep 789, 195 NYS 37; Injunction for use of C.P.A. without authority, in advertising.	1933	Kimball vs. Hall, 87 Conn 563, 89 Atl 186; Unfair competition in shop signs.	1913
Guarantee Veterinary Corporation vs. Federal Trade Commission, 285 Fed 853; False advertising of salt bricks. Claimed patronage of army.	1922	Koke Company vs. Coca Cola, 255 Fed 894-R-254 US 143, 41 Sup Ct 113; Fraudulent advertiser can have equity relief from unfair competition.	1919
Hart vs. Woodbury, 113 NY App Div 281, 98 NYS 1000; False use of name in testimonial for skin disease is libellous.	1906	Leach vs. Carlile, 267 Fed 61-A-258 US 138, 42 Sup Ct 227; Postmaster can judge line where trade puffing becomes fraud.	1922
Henry vs. Cherry & Webb, 30 RI 13, 73 Atl 97; No right of privacy under the common law.	1909	Lueddeman vs. Rudolph, 79 Ore 249, 1916 154 Pac 116; Advertiser cannot be held on advertising offer not accepted exactly.	1916
Holbrook vs. Morrison, 214 Mass 209, 100 NE 1111; Advertisements intended only to annoy may be enjoined.	1913	Lynch vs. Beekins Van, 31 Cal App 68, 159 Pac 822; Fireproof storage must be supplied as advertised.	1916
Hood vs. Beekins Van, 178 Cal 150, 1918 172 P 594; Misleading to advertise fireproof storage and not give it.	1918	McLeod vs. Vinson, 213 Ky 667, 281 SW 799; Advertiser not liable for injuries in stunt contest.	1926
Hoover vs. Sesquicentennial, 26 Fed (2nd) 821; Plaintiff cheated in award of merit prize at Exposition.	1928	May vs. Crawford, 150 Mo App 504, 1899 51 SW 693; False advertising as to source of materials advertised.	1899

Case	Year	Case	Year
Maytag vs. Meadows, 281 US 737, 35 Fed (2nd) 403; Insufficient evidence to show unfair competition.	1929	Peck vs. Tribune, 154 Fed 330, 83 CCA 202-R-214 US 185, 29 Sup Ct 559; "Whatever a man publishes, he publishes at his peril."	1907
Moekel vs. Diesenworth, 253 Mich 284, 235 NW 157; No implied warranty of auction sale.	1931	People vs. Federated Radio, 214 NYS 670-A-244 NY 33, 154 NE 655; Stock promoters must make reasonable investigation before advertising.	1926
Morearty vs. Struck, 226 NW 329; Political libel case. Definition of privilege in advertisements.	1929	People vs. Goslin, 67 NY App Div 16, 73 NYS 520-A-63 NE 1120, 171 NY 627; Advertising false rumors regarding stock is actionable.	1901
Munden vs. Harris, 153 Mo App 652, 134 SW 1076; Common law right of privacy found.	1911	Pope Turnbo vs. Bedford, 147 Mo App 692, 127 SW 426; Advertiser of hair waving method must use preparation of that method.	1910
National Cloak vs. Shapiro, 189 Fed 215; Advertisement is proper subject of copyright.	1911	Pouker, in re, 203 NY App Div 520, 197 NYS 190; Using summons form for advertisements is grossly improper.	1922
Newbro vs. Undeland, 69 Neb 821, 96 NW 635; No unfair competition. Wide latitude for trade puffing.	1903	Remick vs. General Electric, 4 Fed (2nd) 160; Infringement of copyright by radio broadcast.	1924
Noell vs. Remmert, 326 Mo 148, 30 SW (2nd) 1009; Advertisement not fraudulent when truth is matter of public record.	1930	Robbins vs. Peterson, 284 US 680, 51 Fed (2nd) 174; Advertising rival manufacturer as infringer is unfair competition.	1931
Norris vs. No-Leake Piston Ring, 277 Fed 951; Unfair competition in use of advertising catalogue.	1921	Roberson vs. Rochester Folding Box, 171 NY 538, 64 NE 442; No right of privacy at common law.	1902
O'Connor, ex parte, 80 Cal App 647, 252 P 750; False advertising distinct from larceny.	1927	Rothschild vs. Brunswick (etc.), 12 Ohio Cir Ct Rep 741; Mere lying about competitor does not presume damage.	1894
Oliver vs. Henly, 21 SW (2nd) 576, N.S.R.; Advertised cotton seed failed to germinate as offered.	1929	Royal Baking Powder vs. Federal Trade Commission, 281 Fed 744; Change of composition of baking powder must be announced.	1922
Ostermoor vs. Federal Trade Commission, 15 Fed (2nd) 962; Deception of material number of readers of advertisements necessary to sustain unfair competition.	1927	Russel vs. Weiler, 28 Ohio Cir Ct Rep 176; Circulars are evidence of knowledge of fraud of promoter.	1905
Paramount vs. Mitchell, 140 So 328, N.S.R.; Striking picketers must be truthful in placards.	1932	Schnitzer, in re, 33 Nev 581, 112 P 848; Advertising for divorces is misconduct.	1911
Pavesich vs. New England Mutual Life Insurance Company, 122 Ga 190, 50 SE 68; Right of privacy found in common law.	1905	Schwartz, in re, 175 NY App Div 335, 161 NYS 1079; Advertising for collection business is censured.	1916

<u>Case</u>	<u>Year</u>	<u>Case</u>	<u>Year</u>
Standard Oil vs. California Peach & Fig Growers, 28 Fed (2nd) 283; Unfair competition in "Najol treated figs."	1928	Union Car vs. Collier, 232 NY App Div 591, 251 NYS 153; Unfair competition in political franchise.	1931
State vs. Giantvalley, 123 Minn 227, 143 NW 780; Advertising for divorce against public policy.	1913	US Frame Company vs. Horowitz, 204 NY 630-A-139 NY App Div 895, 123 NYS 476; Unfair competition by former employee in mailing pieces.	1910
Stewart vs. Hudson, 222 Fed 584; Distinction between infringement and unfair competition.	1915	Uri vs. Hirsch, 123 Fed 568; Trial procedure to defeat unfair competition charge.	1903
Stone & McCarrick vs. Dugan, 220 Fed 837; Form book of advertisements necessarily misleading is barred from equity.	1915	Von Thodorovich vs. Franz Joseph Beneficial, 154 Fed 911; Suit to restrain misuse of Emperor's name.	1907
Stone vs. St. Louis Union, 150 Mo App 331, 130 SW 825; Advertising bank has duty to depositors.	1910	Witmark vs. Bamberger, 291 Fed 776; Radio broadcast is public performance for profit.	1923
Sun Maid vs. Mosesian, 84 Cal App 485, 258 P 630; Unfair competition as to advertised trademark.	1927	Worden vs. California Fig Syrup Company, 187 US 516, 23 Sup Ct 161; Plaintiff guilty of unfair competition has no rights in equity.	1903
Uhl vs. Harvey, 78 Ind 26; Retiring partner has duty to advertise retirement.	1881	Zeltner vs. Irwin, 25 NY App Div 228, 49 NYS 337; Stock sale circular not an offer to support fraud.	1898

Chapter XI

FORM OF CONTRACT FOR PRACTICAL USE IN EMPLOYMENT OF AGENT

A definite recommendation on agency compensation was indicated in Chapter VIII of Part I -- to repeat, "that the advertiser and agent make arrangements for agency compensation that are mutually agreeable to both." To aid the advertiser and to act as a guide to the making of such arrangement, a practical form of contract is here presented.

The terms of this contract are sufficiently inclusive to anticipate and focus attention upon most of the questions that might arise either at the inception of the contractual relationship between an advertiser and an agency, or during the period of performance under the contract. The individual advertiser may not desire all the services from his agency listed in this contract or may desire more. He should, therefore, change this contract to fit his individual needs.

MEMORANDUM OF AGREEMENT, made this _____ day of _____, 193____, between _____, a corporation organized under and existing by virtue of the laws of the State of _____, (hereinafter called the "Advertiser") and _____, a corporation organized under and existing by virtue of the laws of the State of _____, (hereinafter called the "Agency").

WITNESSETH:

That in consideration of the mutual covenants and conditions herein contained, the sum of One (\$1.00) Dollar paid by the Advertiser to the Agency, the receipt of which is hereby acknowledged, the Advertiser and the Agency agree between themselves as follows:

(1) The Advertiser hereby retains the services of the Agency, in the United States, and the Agency hereby accepts employment by the Advertiser, in the United States, in connection with the preparation and placement of advertisements, (under the conditions hereinafter listed) in newspapers, magazines, radio broadcasting, outdoor advertising and _____, for the _____ product(s), and for such further of the Advertiser's products as may from time to time be designated by him in writing.

(2) In pursuance of its employment by the Advertiser, the Agency shall perform the following duties:

- (a) Study the product(s) of the Advertiser covered by this Agreement, and the market for his product(s).
- (b) Prepare preliminary plans for the proper advertising of the product(s) related to the appropriation available and so designed as to make the best possible use of said appropriation.
- (c) Prepare cost schedules for advertising insertions and other related costs.
- (d) Prepare finished comprehensive layouts and all actual copy to be used in advertisements of all types.
- (e) Purchase art work and engravings, electrotypes, printed matter, and other collateral materials, from artists, designers, photographers, engravers, printers, and others.
- (f) Prepare merchandising plans for the coordination of the Advertiser's advertising and distribution.

- (g) Make contracts in behalf of the Advertiser with owners of advertising mediums and others at the most advantageous rates obtainable.
 - (h) Check the insertion of advertisements in publications for appearance, date, position, size and mechanical reproduction.
 - (i) Check the broadcast of radio advertising for time, accuracy, extent and other related factors.
 - (j) Check the display of outdoor advertising for date of appearance, position, size, workmanship, and mechanical reproduction.
 - (k) Retain custody of the Advertiser's property, and insure its return from third parties.
 - (l) Render bills to the Advertiser for such amounts as may be due and with sufficient promptness to allow the Advertiser to earn cash discounts, if any.
 - (m) Audit and pay promptly all proper bills of owners of advertising mediums or other third parties with funds received from the Advertiser, or upon the Advertiser's authorization.
 - (n) Render any and all other reasonable services in connection with the Advertiser's advertising and distribution.
- (3) (a) The Agency shall in no event place any advertisement of the Advertiser in any advertising medium without first submitting the text and designs therefor to the Advertiser and obtaining the Advertiser's approval thereof in writing.
- (b) Before incurring liability on the Advertiser's behalf for any item of space or time in an advertising medium, or for art work, mechanical parts, printed matter, services or other expenditures within the scope of this agreement, the Agency shall first secure the written authorization of such members of the Advertiser's staff as the Advertiser, from time to time, shall designate in writing as empowered to give such authorization.
- (4) All contracts, papers, correspondence, copy, books, accounts, and other information in the office of the Agency relating to the business of the Advertiser, or the expenses incurred in his behalf, shall be open to inspection and examination by an authorized representative of the Advertiser at all reasonable times.
- (5) The Agency shall not act as the advertising agent for a manufacturer of a competing product, or the producer of a competing service, without first having procured the written consent of the Advertiser.
- (6) The Agency shall not credit to its own account any commissions, discounts, or rebates from any third party, without the prior consent of the Advertiser, except as otherwise set forth herein.
- (7) The Agency shall set aside in a separate account, all moneys received from the Advertiser, which are forwarded to the Agency for payment to owners of advertising mediums, or to suppliers of engravings, electrotypes, art work, radio talent, printed matter, photographs, or other related costs, and shall not commingle such moneys with its own funds.
- (8) The Advertiser shall pay to the Agency the following amounts in payment for the services and expenditures of the Agency:

(a) In reimbursement for authorized expenditures of the Agency on the Advertiser's behalf, an amount equal to the net cost to the Agency of each advertisement placed by the Agency for the Advertiser in an advertising medium, and for which payment may become due to the publication or its authorized representative during the term of the Agency's employment. The term "net cost" under this agreement means the exact amount the Agency credits the third party with whom it deals, that is, the gross card rate less any and all discounts, rebates, differentials, or commissions allowable to the Agency by the third party, except cash discounts. The Advertiser shall be entitled to deduct the cash discount allowable to the Agency by each owner of an advertising medium only when the Advertiser shall have paid the Agency within the time when the Agency, in turn, would have been entitled to claim this cash discount from the owner of an advertising medium or his authorized representative.

(b) The Advertiser shall pay to the Agency an amount equal to the net cost to the Agency of all art work, mechanical parts, printed matter, radio talent, and other advertising adjuncts, the purchase of which has been authorized by the Advertiser and which the Agency has prepared, produced, or obtained for the Advertiser, and which has been accepted as satisfactory by the Advertiser during the term of the Agency's employment. The term "net cost" as here used, shall have the same meaning as set forth in paragraph 8a above.

(c) The Advertiser shall pay to the Agency an amount equal to the net cost to the Agency of all material used by the Agency in packing and forwarding materials for the Advertiser's advertising, and for all postage, express or other charges incurred in the transportation of such materials during the term of the Agency's employment.

(d) As compensation for the Agency's professional services, as covered hereby, the Advertiser shall pay to the Agency during the term of the Agency's employment, an amount equal to _____% of the net cost of each item included in Section a of this paragraph, (or a fee of \$ _____).

(e) As additional compensation for the Agency's services, the Advertiser shall pay to the Agency, during the term of the Agency's employment, an amount equal to _____% of the net cost of each item included in Section b of this paragraph, (or a fee of \$ _____).

(f) As additional compensation for the Agency's services, the Advertiser shall pay to the Agency, during the term of the Agency's employment, an amount equal to _____% of the net cost of each item included in Section c of this paragraph, (or a fee of \$ _____).

(9) The Agency shall bill the Advertiser in ample time to allow the Advertiser to take advantage of all cash discounts, but such bills shall not become finally due and payable from the Advertiser to the Agency before the date they are due and payable from the Agency to the owner of an advertising medium, or other third party.

(10) The Agency shall bill the Advertiser for additional payments becoming due on account of "short rates," as that term is customarily understood in the advertising business, and shall return to the Advertiser the exact amounts received in rebate from publishers or other third parties in respect of rate reductions, lineage shrinkage, "short circulation," non-appearance of the advertisement, faulty reproduction, or other similar cause.

(11) The relationships contemplated by this contract shall begin with the _____ day of _____, 193____, and shall continue in force until _____. Upon the termination of this contract, all rights and liabilities of the Advertiser shall cease, including the carrying to completion of plans already made, or the publication or production or radio broadcast of advertisements in any space or over any net work which may have been reserved. This contract shall be renewable only in writing.

(For those who would prefer a more flexible form for paragraph 11, the following is recommended:

(11) The relationships contemplated by this contract shall begin with the _____ day of _____, 193____, and shall continue in force for _____ from that date; and thereafter until terminated by sixty days notice in writing given by either party, and sent by registered mail to the head office, or principal place of business of the other party receiving such notice. In the event of such notice of termination, and after the expiration of sixty days following the notice, all rights and liabilities of the Advertiser shall cease, including the carrying to completion of plans already made, or the publication or production or radio broadcast of advertisements in any space or over any net work which may have been reserved.)

(12) Upon the termination of this contract, the Agency shall transfer, assign, and make available to the Advertiser, or his representative, all property and materials belonging to or purchased for the Advertiser, and all information regarding the Advertiser's advertising, and all reservations, contracts and arrangements with owners of advertising mediums, or others, for advertising space, time, or materials yet to be used, and all rights and claims thereto and therein and no extra compensation is to be paid to the Agency for its services in connection with this transfer.

(13) On the last day of the term of this contract, the Agency shall bill the Advertiser for, and the Advertiser shall then pay, all amounts described in paragraph 8, Sections a, b, and c of this contract, not previously billed or paid for which it may be entitled to claim reimbursement and/or compensation from the Advertiser under this agreement. In no event is the Agency to receive compensation or commissions in connection with space, time or material, the payment for which shall become due to the owner of an advertising medium, or others, after the termination of this contract.

(14) The Agency, under the terms of its employment, shall render undivided loyalty and allegiance to the Advertiser in relation to the advertising of the products covered by this contract.

(15) The Advertiser expressly reserves the right, in his own discretion, and for reason deemed by him to be sufficient, to modify or reject any and all schedules and plans submitted by the Agency, and to direct the Agency to cease work in connection therewith, and in such case, the Agency shall immediately notify all publishers, printers, engravers, artists, designers, or other third parties engaged in carrying out such schedules or plans to cease work thereon.

(16) All plans for advertising, all preliminary sketches, all layouts, and all "copy" shall from the time of approval by the Advertiser, become the exclusive property of the Advertiser, and at all times after such approval, the Advertiser shall have the full and free right to use any and all such property in any way deemed by him to be necessary or advisable, either directly or through agents or otherwise, and whether this contract shall, or shall not have been terminated, and without payment of any compensation to the Agency for the same, except as herein specifically provided.

(17) The Agency shall furnish the Advertiser promptly proof of payment to publishers and other third parties in respect of all work and services for the Advertiser's account. Such proof shall be made available to the Advertiser at his option, at his place of business, for audit once a month.

(18) This is a personal service contract and is not assignable.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be signed by their officers thereunto duly authorized, attested by their secretaries and the corporate seal of each to be hereunto affixed.

THE ADVERTISER:

By _____

Attest:

Secretary.

THE AGENCY:

By _____

Attest:

Secretary.

PART III

CONTROVERSIAL POINTS OF VIEWS
ON THE AGENCY COMPENSATION SYSTEM

Chapter XII

A STATEMENT SPONSORED BY THE
AMERICAN ASSOCIATION OF ADVERTISING AGENCIES

On December 16, 1921, the American Association of Advertising Agencies according to "Editor & Publisher" (December 24, 1921, page 15) sent a letter and an accompanying memorandum to its members outlining views on and arguments for the agency compensation system.

The letter read:

As you may know, the Association of National Advertisers at a recent meeting passed a resolution looking to the abolition of the advertising agency differential, and since then has issued bulletins to its membership and has been in communication with certain publishers on the subject.

This movement seems to us most unwise on the part of the Association mentioned, and, in any event, most inopportune, as at the present time constructive effort is necessary to meet business conditions and not such a destructive move as is advocated.

It is needless to say that the proposal will be combated with all the resources at our command if necessary later.

The Association of National Advertisers was formerly known as the Association of Advertising Managers. The change in name has not altered the character of the membership so far as we are informed. For the most part the active members are not heads of businesses or advertisers themselves, but merely the so-called "advertising managers" who are in some cases heads of departments. The organization includes only a very small percentage of the advertising managers of the country and even in its own membership the movement is not unanimously supported. Many of the better known members of the association are in favor of the present agency system and against this attempted change.

However, we must all recognize the menace necessarily involved in any propaganda such as this, whatever the origin or motive.

For the present, our advice is that the subject be absolutely ignored in discussion or conversation with all persons except our own members, and that we say nothing except when the subject is brought up.

However, we ought to be prepared for any argument that may be forced upon us. A prominent member of our Association has written a brief intended to present some of the outstanding features of the situation in the form of the memorandum accompanying this bulletin.

Every member of our Association and every executive in his organization is earnestly requested to read this memorandum all thru, so as to refresh his understanding of some of the basic principles which underlie our business and as an aid in preparation for discussion on the subject that is liable to come up at any time.

The memorandum is also intended for confidential use with publishers if occasion seems to require it. It must not be published or mailed out to lists or distributed in any way at the present time.

If any propaganda literature of the character mentioned above from the Association of National Advertisers or from other sources has come to you, we should appreciate it if you would kindly send it immediately to headquarters, and also forward promptly any literature or communication upon the subject which may come to your attention later. We wish to keep closely informed along this line as far as possible.

The memorandum referred to in the foregoing letter of the American Association of Advertising Agencies read:

Advertising Agency Service

Has It Justified Itself To Advertiser & Publisher?

A few thoughts on the recent Advertising Managers' proposal that the Agency differential be abolished, by one who has been in the Advertising business for over a quarter of a century both as Advertising Manager and Advertising Agent.

Every now and then during the past twenty-five years the statement has been made that the method of paying for Advertising Agency Service is all wrong. But the system has gone on and worked well.

About seven years ago the Association of National Advertising Managers passed a resolution condemning it. But nothing happened beyond that.

A short time ago this organization, which is now known as the Association of National Advertisers, is said to have passed a similar resolution.

As they say in "The Tavern," "What's All the Shooting about?" In other words, what are the specific objections to the Advertising Agency as conducted today? I have asked many this question but, frankly, I have not been able to get any definite replies.

Consequently, I am going to ask and answer a few questions so that we may be able to intelligently discuss the proposition.

Now, what are the real, honest objections to the present system?

First: Is it that the Advertising Agency is overpaid? If so, that objection is made in ignorance of the true conditions, because during the past few years the Advertising Agency which has made 3% net on its turnover has been very fortunate indeed.

Second: Is it that agencies are inept or dishonest? If this were true, the abolition of the differential would not help the situation. But it is not true. Today there is no excuse for an advertiser or publisher dealing with an agency about whose ability and integrity there is any question. There are today many big, high-grade Agencies of national reputation to select from. If the advertiser deliberately selects an unknown and inexperienced Agency on account of friendship, or in an effort to secure rebates, it is his own fault if he does not get proper service.

Third: Do advertisers object to the present system? The answer is found in the fact that never in the history of advertising have relations between advertising principals and the Advertising Agency been so cordial.

Fourth: Do publishers object? Outside of a few trade publications which have never allowed a differential, there is no trouble about this proposition. There hasn't been for several years. It is generally accepted as standard.

Fifth: Is it the Advertising Manager who objects? I am sorry to say that there is a small and active group who feel the Agency System is wrong. In fact, it is because of this feeling that between these Advertising Managers and their Agencies there is not the proper kind of cooperation. Just why this is so is difficult to understand. I have wondered if it is possible that some of these men feel that their positions would be more important if the Advertising Agencies were eliminated. If this is so I think they are making a great mistake. If I were an Advertising Manager again I should hire the best Agency in America to work with me and then claim my share of credit for the success of the proposition. Unfortunately, some of these men also feel that one of their principal functions is to stand between the Agency and the Executive Officers of the Company in order to justify their own position. This results in lack of cooperation between the sales and advertising efforts, with a resultant loss of efficiency to both.

Sixth: What would be the practical result of cutting out the Agency differential? What would be accomplished? What is its object?

These are all pertinent questions and their answers would consume a great many words, but the final outcome would be that Advertising Agencies as they exist today would gradually disappear because advertisers, having been educated by years of experience to expect the publisher to pay the Agency, would undoubtedly object to

paying the adequate service fees and would attempt to save money by doing all their advertising direct.

For instance, take an account running \$200,000 annually. I am certain that if the average Advertising Agency appeared before the Board of Directors of such a concern and told them that they would have to pay a service fee of \$50,000 (15%) it would sound exorbitant. It would be difficult indeed for the Agency to convince these men, unfamiliar with advertising, that it would cost approximately \$24,000 to properly handle this account and that the most he could expect in profit would be 3% or \$6000 for a year's work by his entire organization.

If the Agency differential were abolished this situation would arise all the time, and the natural result would be that all advertisers would install their own departments and do business direct.

The very nature of the Advertising Agency business makes the Agency particularly valuable to the advertiser because he has the opportunity of studying the varying qualities and phases of salesmanship in twenty, or even fifty different lines and is able to bring to any advertiser all of the experience thus gained.

Time and time again an Advertising Agency thru months of effort has succeeded in selling a small advertising campaign to a manufacturer with the result that because this was successful other efforts were launched until large sums of money could be profitably spent. And this success has been shared in by both advertiser and publisher.

The Advertising Manager usually is the head of a Department only, not an executive, and as such is not a determining factor in the matter of policies and expenditures. For this reason he needs the Advertising Agency.

The Advertising Agency is an independent outsider. His viewpoint is that of using money TO MAKE MORE MONEY for his clients. He is constantly thinking and planning for increased advertising and sales efforts, knowing from experience that this is the road to big business success. He knows that it is not by saving but by intelligent spending of money and effort that success is achieved. To eliminate him as a factor in business would be to cut out one of the most important creative forces in commercial life. Many of the biggest business executives in America will check up this statement 100% from their own experience. And it is the very biggest executives who know this better than any one else.

The Association of National Advertisers, which has recently proposed that the Agency System be changed, was formerly called the "Association of National Advertising Managers" and while the name has been altered, my understanding is that the change did not materially alter the character of its membership.

I make this statement because I do not think the officials and executives among the large advertisers of the country are familiar with or in favor of any such radical change as has been suggested.

In fact, it is well known that a number of more important men in the A.N.A. itself are absolutely opposed to the present agitation and not in sympathy with the recent action. These men recognize that it is important to have close cooperation with the Advertising Agencies and are big enough not to be afraid of having their prerogatives interfered with.

We must not overlook the fact that the group behind this movement indulge themselves in a great fallacy when they expect that if the 15% differential is abolished there will immediately be a corresponding reduction in rates.

Any large publisher will tell you that under no circumstances could this be done. In fact, one of the biggest publishers told me personally the other day that if the Agencies' differential were abolished it would mean higher rates within a very short period, for the reason that their profit depends upon volume, and the disintegration or disappearance of Advertising Agencies, who are the greatest creators of business, would necessarily mean reduced volume, with a corresponding higher cost for advertising.

The suggestion that "service fees" should take the place of the Agency differential obviously does not consider the Publishers' side of this proposition. Service fees would never work satisfactorily. If put into general practice such a plan would wreck the Agency System in a very short time. There would be left simply individual advisers, men who would give their opinion for whatever they could

get for it. The best men in the Agencies would quickly get out of the business and many of these organizations would in a short time degenerate into ordinary "press agencies."

The business of giving advertisers advice for fees has been in existence more or less for a long time. It has not worked out well. There are no large or prominent businesses along these lines.

It is obvious that no single adviser would have the means to carry out his recommendations comparable in any way with the resources of the present day fully-equipped Service Agency.

The modern Agency has been the backbone of the development of modern advertising. It is to be credited with the larger part of the national advertising that is seen today.

The advertising business, like any other, cannot give something for nothing. Therefore, with a "Service Fee System" in general use the tendency would be to cut prices in order to bid low, and to give less and less service to the advertiser, with the result that in a few years there would be no large constructive Agencies such as you find today with strong merchandising, copy, art and research departments.

One of the strongest features of the present Agency Service from the standpoint of the advertiser, is that compensation is standardized at 15% on the gross amount paid by the advertiser. Therefore, the only question the advertiser has to decide is, which Agency will give him the best and most service. This is also an ideal situation from the publisher's point of view because with the aid of a strong Agency the advertiser's chance of success is greatly increased.

The constant growth of the service that Agencies give the advertisers has, in some cases, overlapped the work of some Advertising Managers and made them unnecessary. No one is to blame for this. Where the Advertising Manager has worked in close cooperation with the Sales Department and the Agency in constructive, creative work, his position has been a permanent and growing one. In many cases not only has his value been enhanced, but in some instances he has become the Sales Manager of the Company.

There is another type, however, about whom the question is sometimes asked, "Why does he change his job so often?" These men shift from concern to concern and frequently to other fields of endeavor. It so happens that they are also very frequently the leaders of movements such as the one we are discussing. For instance, I do not think that a single one of the Committee of Advertising Managers who seven years ago declared that the Agency System was obsolete is active today in the new movement. Some of them are not even members of the Association.

And seven years from today a new group may again go thru the same motions unless the advertising of large, important concerns is placed under the direction of Advertising Managers who are closely associated with and in the confidence of the Sales Department and the Executives of the Company. This will insure a permanent and continuing advertising policy, as well as closer and better cooperation between the advertiser and his Agency.

More and more executives are reaching this viewpoint every day. They are realizing that advertising is the one thing by which their merchandise is known to the public. As a consequence, many of the largest executives are today devoting as much of their time to advertising as to raw materials, production or the installation of machinery.

Frankly, I do not see why the Advertising Manager should have any interest in the matter of Agencies' Differential. It seems to me this is something that concerns the publisher and the Agency only. It is purely a business arrangement between them.

The publisher supports the Advertising Agency because he is able by this method to have a large creative force constantly at work. He finds it provides for his financial protection. And most important, it enables the publisher to offer advertisers a completely trained and experienced service, without which the proposition is apt to fall short of success.

The advertiser should realize that if an Advertising Agency places a \$1000 worth of business in one or several mediums, the \$150 which he received as compensation from the publisher is not paid to him for that specific work. The publisher

pays him the differential on that order for the general service he is giving in creating advertising for him and other publishers; for offering them financial protection, and for the general work he does in the upbuilding of advertising as a whole in which every publisher and every advertiser shares, because it makes for a continuing volume which is essential to reasonable advertising rates.

If the Advertising Manager has a right to tell the publisher how he shall pay and handle the Advertising Agencies of the country, he would also have the right to tell him whether he should have solicitors or not and what he should pay them, and to criticize every other part of his business. For the consumer always pays all the costs of running a business.

If ever the Advertising Agency has justified itself it has been during the trying six months just past, when we have had practically no Advertising Agency failures; when Agencies have been a financial bulwark for the publishers of the country, and have stood by their guns, working in many cases without a profit to bring about better advertising at a time when it was far more necessary than during the boom period of a year ago.

The idea of doing without Agencies is not new. It was tried out many years ago, but the plan did not work and was soon abandoned.

The irony of the whole situation seems to be that this radical change is advocated when, for the first time in two generations, Agency differentials have been standardized with 99% of the publications in America. Bigger and better men are in the Advertising Agencies. Bigger and better organizations are carrying on the work. Are the publishers going to destroy all this because a few Advertising Managers suggest that a change is necessary and offer no substitute plan to the publishers?

If there are some evils in the Advertising Agency System, why not name and eradicate these rather than destroy the whole structure?

There are obviously both good and bad advertising agencies as is the case in every profession. Among the members of the American Association of Advertising Agencies, that give publishers most of their business, there are houses that every publisher and every business man who has relations with them, respects and regards highly. These agencies have created a vast amount of valuable advertising business for publishers. They are a credit to American business. No publisher wishes to destroy them. It would be uneconomical to do so, and in addition, an entirely new system of creating and handling advertising would have to be built up.

Yet, this is what a small group of advertising managers is suggesting, in the hope, I fear, that their positions would be bigger and more important if this were brought about. If not, what is the reason? Obviously, this plan is not going to reduce rates or save their principals any money. It is certain to raise rates and advertising costs.

The Advertising Manager, in my judgment, should cling to the Advertising Agency, for his job depends upon the success of the advertising and anything and everything that contributes to that end is to his advantage. The help that his company receives from the Agency is all to his benefit, but more important than that, is the saving in money to his employers.

If the Advertising Agency disintegrated every publisher would have to increase his soliciting staff very materially. That would be additional expense. He would undoubtedly find it necessary to install a Service Department. Still more expense. And then we would have chaos, because obviously no publisher could recommend a well-rounded advertising plan, from an unprejudiced standpoint, as naturally he would be especially interested in his own publication.

Imagine any publisher's Service Department trying to prepare copy for keenly competing accounts, such as Goodyear and Goodrich, or Colgate's and Williams', or Columbia and Victor. It simply could not be done. Agencies have recognized this for years and the best of them do not take competing accounts.

No matter how large a concern is or how confident in the correctness of its own views, it could not fail to be benefited by the opinion of some one outside of the organization. It is impossible to get a true perspective from within.

No individual advertiser could afford to carry on his payroll as many able specialists as are found in the personnel of the better Agencies at the present

time. If ten or twenty advertisers, now the clients of an Agency, each went to the expense and trouble of organizing equally well qualified staffs for their own businesses only, it would obviously be an economic waste.

Whether an advertiser feels that he gets maximum benefit from an Agency every minute of the time is not the question. It is whether the system as a whole is of benefit to him. The Advertising Agency has made possible the strong publications and valuable advertising mediums that we have today. It has produced a volume of business for the publications which has reduced their overhead and made the cost per line less than it would otherwise be. It has aided in making advertising profitable to advertisers in general, thus making advertising more satisfactory to all concerned.

The more you analyze the present Agency Service, the stronger it appears. It may have some minor weaknesses. But today it is working well. It is delivering the goods; what we need now is not a new agency system but a building up of the advertising manager's functions linking him more closely with the Sales Department, and in addition we need a new system covering the recognition of agencies.

If this could be carried out and Agencies selected with proper care and after proper investigation it would quickly eliminate the irresponsible and the inexperienced.

The only weak point in the Agency System today that is of importance is the "recognition" by publishers of men whose only claim for recognition is the fact that they have in some way secured a piece of business which they offer to the publisher with a request for differential.

If this weakness could be corrected by the publishers and the Agencies getting together on some practical, workable plan which would insure the recognition of only such Agencies as have the proper experience, ability, and capital to properly serve advertisers, we would have an ideal arrangement.

Advertising Agency Service as it is working today, is one of those peculiar situations where, contrary to the old adage, an organization is really able to serve two masters well.

For the publisher --

- It creates new business.
- It increases the volume of old business.
- It offers financial protection.
- It makes it possible for him to offer to advertisers a trained organization without whose aid advertising success would be much less certain.

For the advertiser --

- It gives an expert service that is absolutely essential to success.
- It provides an outside viewpoint that is beneficial to every business.
- It works towards improving merchandising and selling methods.
- It teaches him to use efficiently and economically the greatest commercial force ever known.
- It gives him the services of men he could not possibly hire for the creation of his own advertising.

In closing, don't forget that if the suggestion to abolish Agency differential is carried out, it will mean increased advertising costs immediately:

1. Because if the publishers cut off the differential they will not reduce their rates a corresponding 15%. They cannot afford to do this for the reasons stated in this paper, and if there is any doubt about this statement it will be verified gladly by any of the leading publishers.
2. Because most advertisers will have to create a special department of their own immediately to do the work which the Advertising Agency has heretofore done and for which he has been paid by the publisher.
3. Because even with his own Advertising Department there will come times when he will want advertising counsel for which he must pay an additional service charge.

When once it is thoroughly understood that if the suggestion of the Advertising Managers' group is adopted it will mean -- higher costs to the advertisers, a great loss of business to the publishers, and disintegration to the Advertising Agencies -- this unfortunate and disturbing agitation will quickly die. Its epiphany might well be --

"Since I was to be so quickly done for
What on earth was I begun for?"

Chapter XIII

A STATEMENT BY THE

ASSOCIATION OF NATIONAL ADVERTISERS

On July 6, 1923, -- more than eighteen months after the agency documents quoted in the preceding chapter had appeared -- the Association of National Advertisers made its views on the agency compensation system known in the following memorandum, headed "The Fundamental Issue in Advertiser-Agency-Publisher Relations":

The Fundamental Issue

In Advertiser-Agency-Publisher Relations

During five years -- May 1916 to May 1921 -- the questions of advertiser-agency relations and of bases of agency compensation were only incidentally referred to twice in meetings of the Association of National Advertisers. This virtual silence on these subjects was the result of a decision of the A.N.A. directors in the Spring of 1916 that these matters would not be presented in any meeting for further discussion unless there should be new developments that made reintroduction imperative.

The Association by no means abandoned its firm belief in the principle "that agency compensation must be a measure of the service rendered and not be based on the space used or the money spent"; indeed general meetings continued to re-affirm faith in this principle. But statement and restatement of opinion had settled into conviction, and members were content to let the leaven of the service-fee idea work.

Efforts of A.N.A. to Cooperate with A.A.A.A.

When the American Association of Advertising Agencies was formed in June 1917, the A.N.A. sent to the first president of that organization a letter of congratulation and hope that the two associations might be able to find common ground for cooperation:

During 1918, 1919, and the early part of 1920, the A.N.A. Secretary, with, of course, the approval of his directors, strove continually and consistently to bring about organization for cooperation; the proposal being that the A.A.A.A. appoint a committee to work with the A.N.A. Agency Committee.

After two and one-half years of such effort, the A.A.A.A. appointed a Committee, which met with the A.N.A. Committee in June 1920. At that meeting it was agreed that all matters of mutual interest or of antagonism should be referred to the committees; that the committees should meet whenever one or the other should desire a meeting; and that each Association should distribute to its membership the other's statement of its aims, purposes, and accomplishments.

To the chairman of the A.A.A.A. Committee, the A.N.A. statement was furnished but never distributed. Ultimately the Chairman of the A.A.A.A. Committee declined to furnish any statement to the A.N.A.

Between July 1920 and February 1921, the A.N.A. Committee on four occasions asked for a meeting but without result. Through one of the officers of the A.A.A.A. who had not previously known of the arrangement made between the two Associations, the A.N.A. ultimately brought about a meeting in April, 1921.

At this meeting the A.A.A.A. agreed to endeavor to correct the general misunderstanding caused by its newspaper committee among newspaper publishers on the question of the local-foreign rate differential; but declined to cease its propaganda on the agency commission question.

This question had never been referred to the two committees mentioned, and the propaganda had been proceeding since January 1920.

The Propaganda of the A.A.A.A.

This propaganda had for its object, with the aid of newspaper publishers and representatives, --

1. The compilation of a list of newspapers "on record in writing that their policy is not to allow agency net rates or other rebates to direct advertisers."

2. The compilation of a list of newspapers "on record in writing that they will not add to the list of direct advertisers with whom they are now doing business at agency net rates or to whom they are allowing some other form of rebate."

The newspaper publishers were told that "in default of definite advice from publishers regarding their policy and practice in the matter of rebates, the Committee will transmit to members of this Association (the A.A.A.A.) whatever trustworthy information it may be able to secure upon these points."

And in July 1920 newspaper publishers were informed by the chairman of the A.A.A.A. Newspaper Committee that "our purpose in furnishing these lists of publications to our members is that in making estimates or giving out orders, all things being substantially equal, they may, if they feel so inclined, discriminate in favor of newspapers that have declared themselves for a constructive and profitable business policy."

(It is our information that on February 1st, 1922, a list of daily newspapers with discriminating index letters was issued "For the Confidential Use of Media Departments." And that this document also records the attitude on treatment of direct advertisers of publishers' special representatives.)

The Consequent Situation Facing the A.N.A. in May, 1921.

In May, 1921, then, the A.N.A. at its Atlantic City meeting, was faced with this situation:

1. All its efforts to secure cooperation on the part of the A.A.A.A. in working out, sanely and conservatively, mutually equitable bases of agency service and compensation had been foiled.

2. Freedom of commercial intercourse between individual advertisers and individual publishers had not only been interfered with; but a policy announced of making up lists of newspapers for the use of advertisers, not on the basis of merit to serve the advertisers' commercial interest but of newspapers' subservency to the dictates of an organization, the individual agencies of which contract to serve advertisers.

The policy of the A.N.A. has always been to endeavor to settle disputes with any factor or unit in advertising, or to secure the abandonment of inequitable practices, without the intervention of any outside authority.

Accordingly, the only course the A.N.A. could take, it took; that of disseminating knowledge of its views on the agency commission question and thus endeavor to offset the influence of what it could not but consider an unwarranted, negative, and restrictive propaganda -- a propaganda that could only result in arresting development in advertising and marketing practice, to the damage of advertiser, of publisher, and of agency.

We are most definitely opposed to any attempt to establish the "closed shop" -- in advertising practice, and any attempt to enforce stereotyped uniformity under the plea of standardization.

Attitude of A.N.A. toward Commission System and Agencies.

Where do we actually stand on the question of the publisher's commission method of agency compensation? Do we actually insist that this system shall be abolished overnight or within the very near future?

Do we favor revolution in this respect, or are we, rather, trusting to evolution?

Do we wish to destroy the advertising agency?

In all that we have published or said during the past twelve years and especially during the last two years, we not only have not attacked advertising agencies;

we have gone on record definitely to the effect that we regard them as economic factors worthy of perpetuation. We desire, not the destruction, not the impoverishment, but the increasing importance of the advertising agent and his being placed in a less hazardous financial position than that which he now occupies.

To expect revolution rather than evolution regarding the commission system would not only be foolish but contrary to all the traditions of the A.N.A.

A quick and sudden abolition of the system would harm advertiser, advertising agency, and publisher.

Change and readjustment must be slow, carefully considered, and predicated upon specific conditions and developments in the advertiser's and in the publisher's business.

At the same time, the ultimate demise of the commission system is certain. It is actually breaking down now, as between advertiser and agency, and as marketing development goes forward, the breaking down will be swifter.

Development of a marketing rather than merely an advertising point of view of business promotion will most certainly demand changes in advertising practice and procedure.

So, while revolution in advertising practice and procedure must be avoided, no attempt to prevent evolution can be tolerated.

Advertisers are endeavoring to anticipate and prepare for the inevitable changes; and every selling interest in advertising would be well advised to do likewise rather than lend itself to any restrictive or stereotyped course that can only result in its failing to serve its customers' continually changing and developing requirements.

Then What is the Fundamental Issue?

If the A.N.A., then, has never, and does not, consider an overnight disappearance of the agency commission possible or desirable, what is the A.N.A. really contending for? What is the fundamental issue involved?

The Legal Relationship of the Agent.

Before we answer that question, which we will answer quite directly and simply, let us discuss a matter on which there is still a great deal of misinformation, confusion, and lack of definition, -- the status of the advertising agent, his legal relationship to the advertiser and the publisher.

In discussions of the legal status of the advertising agent, it has been asserted that the agent is an independent factor.

So he is -- until he enters into contractual relations.

Then he becomes, obviously, the agent of the principal with whom he has contracted.

And that principal is responsible for all acts of the agent, within the terms of the contract.

The advertising agent contracts with the advertiser to deliver a stated service. The method ordinarily employed in such contracting is the "Letter of Employment." This "Letter of Employment," as defined by the courts, constitutes a contract of agency.

As stated by our counsel, Mr. John N. Boyle, at our recent Detroit meeting, -- "When an agent acts within the apparent scope of his authority for a disclosed advertiser and contracts in the name of that advertiser, the latter alone is bound by the contract."

The advertising agent being the agent of the advertiser, it lies between advertiser and agent to determine mutually the character, quantity and quality of service to be rendered and the compensation to be paid for that service.

Whenever, therefore, an agent whose contract and course of action and operation show that he is the agent of the advertiser, signs any publisher's document

which is contrary to the letter and spirit of his contract with the advertiser, he plainly acts not only unethically but in legal violation of that contract.

Incidentally, it will be found that the source from which an agent's commission comes -- or rather, seems to come -- does not determine the agent's legal relationship.

The Fundamental Issue.

What the A.N.A. is contending for should now be apparent. That which is, and always has been, the nubbin of the agency-advertiser-publisher controversy should be evident. The fundamental issue should be as clear to publisher and agent as it is to us:

The fundamental, essential issue is that the publisher shall not interfere between the advertiser and his agency in any way whatsoever, especially in attempting to dictate what the agency shall receive, or the advertiser pay, as compensation for agency service, regardless of the character, quantity, and quality of the service.

Chapter XIV

THE CONTROVERSY PLACED BEFORE THE
NATIONAL RECOVERY ADMINISTRATION

On August 28, 1933, a Code of Fair Competition (National Recovery Administration's Registry No. 1702-17) was submitted to the National Recovery Administration to govern the "Advertising Agency Business." The committee which drew up this proposed code consisted of thirteen individuals drawn as follows: Nine representatives of agencies belonging to the American Association of Advertising Agencies; the president of the Association; and three representatives of agencies not members of the Association.

The views of this Committee of agents on agency compensation as stated in this Code, under the heading of Unfair Trade Practices were:

Taking from any third party a profit, discount, or commission other than the regular agency commission allowed by publishers, unless known to the client and agreed to by him.

For any agency to rebate any part of its commission to an advertiser, or for any agency to be owned or operated for the financial benefit of any advertiser or group of advertisers and/or their employees who thus directly or indirectly obtain the equivalent of a rebate and circumvent the conditions of agency "recognition" required by media owners and/or their organized bodies.

It shall be considered as rebating to place men in the service of the advertiser at the agency's expense or to assume all or part of the salary of any employee of the advertiser, or to pay any fee or compensation to any one connected directly or indirectly with the advertiser, or to any third party for obtaining or holding an account. It shall also be considered as rebating to agree to allow cash discounts not earned by prompt payment on cash discount dates.

The practice of charging 16-2/3% on net cost of total advertising volume shall not be construed as rebating.

The Association of National Advertisers objected to such provisions on compensation becoming part of a "Code of Fair Competition" for the agency business in the following official statement approved by its Executive Committee and filed with the National Recovery Administration on August 17, 1934:

Statement in Behalf of
The Association of National Advertisers, Inc.
In Respect of The Proposed Code
To Govern Advertising Agents.

Part I
(1)
Introduction

This statement is filed in behalf of the Association of National Advertisers, Inc., (hereinafter called the A.N.A.) a non-profit membership corporation, (New York) of the type usually known as a "trade association." Its membership includes 266 firms, corporations or individuals known as "national advertisers," who use advertising to sell, or to help sell their goods, wares, merchandise, or services.

The authority for the filing of this statement devolves from a resolution of the Executive Committee of the Board of Directors of the A.N.A., adopted at a duly convened meeting, held in the City of New York, on the fourteenth day of September, 1933, which reads as follows:

WHEREAS, the Executive Committee of the Board of Directors of the Association of National Advertisers has now had an opportunity to examine, for the first time, the proposed code of fair competition, submitted in behalf of certain advertising agents to the National Recovery Administration, on or about

the 26th day of August, 1933, to govern the advertising agency profession, and has received many letters of comment on such code from among its members, and

WHEREAS, such examination of such code and of such letters in comment thereon has disclosed that it (the Code) contains provisions of vital interest and concern to the manufacturers of the United States who use advertising to sell, or to assist in selling goods and/or services, and

WHEREAS, it is deemed highly advisable that there be filed with the National Recovery Administration the views of such manufacturers to the extent that such views are represented among the members of this Association.

NOW THEREFORE,

BE IT RESOLVED, that the proper officers of this Association be, and they hereby are, authorized, empowered and directed, in such form and in such manner as to them shall appear necessary and/or desirable, to make protest to the National Recovery Administration against the adoption, in whole or in part, of the proposed code to govern the advertising agency profession, and

BE IT FURTHER RESOLVED, that without limiting the generality of the foregoing, such proper officers be, and they hereby are authorized, empowered and directed to oppose such proposed code, for the following, among other, reasons:

- (1) It is not a code that is primarily designed to regulate advertising agents in their dealings one with the other, but it attempts to force upon advertisers and publishers an arbitrary method of doing business with each other;
- (2) Its adoption would tend to perpetuate an unsound business principle - a principle which acts as an incentive to create greater volume of advertising, whereas the incentive should be to create advertising that produces more effective results;
- (3) Its provisions are unenforceable by advertising agents alone;
- (4) It attempts to describe as dishonest, trade practices which are fair and honorable, including the maintenance of advertiser-owned agencies and the making of contracts with agencies on a fee basis.

Since the foregoing resolution was adopted, the proposed code of fair competition for advertising agents referred to has been revised. The language is different but the purpose is the same. The present proposed code is still a price-fixing document.

(2)

Background

Before explaining the general objections of the A.N.A. to the present proposed Code, it seems necessary and proper that a background be developed which would - (A) define the purpose of national advertising; (B) give a description of that business; (C) analyze the business of the advertising agent, and (D) discuss current dissatisfaction with the discount method of computing agency compensation.

(A) The Purpose of National Advertising

National advertising is part of the selling process of the manufacturer and in some instances, it is his entire selling process. It is used to help decrease the cost of getting commodities and/or services to the ultimate consumer. Statements taken from the writings and speeches of advertisers, advertising agents, and others which could be given would support that conclusion.

There are those who hold to the view that advertising is not only part and parcel of the advertiser's selling process, but more, - that it is the guardian and keeper of the business advertised, and a benefactor to the public in reducing the price of the finished commodity. For illustration, Roy S. Durstine, of Batten, Barton, Durstine & Osborn, Inc. (advertising agency) and a former president of the American Association of Advertising Agencies (hereinafter referred to as the Four A's), in his book "This Advertising Business" (Scribner's - pages 35 and 36) adopts that point of view, in the following language:

"Anything that can let a manufacturer buy more cheaply because he buys in larger quantities; anything that can make his salesmen sell more rapidly and carry less baggage; anything that can lower the cost of his credit department by making merchants want to pay his bills promptly so that he can get more of his merchandise; anything that can make the public prefer his product because they know it will be as good today as it was yesterday; anything that does all these things contributes to every department of a business. And that something is advertising."

(B) The Business of National Advertising

(1) The Advertiser:

The advertiser himself would appear to need little definition. It is he who spends the money for advertising space. In a very true sense, he is the consumer of advertising space.

Policies relating to advertising usually are made by the board of directors or by officials of the company seeking to advertise, and those policies are executed, wholly or in part, within the company's organization, through its sales and/or advertising departments. The degree to which details are handled in the advertiser's organization depends, to a considerable extent, upon the type of advertising medium to be employed. The usual procedure provides for collaboration between the advertising and sales departments of the advertiser on the one hand, and a professional specialist in the art of advertising on the other.

In connection with the foregoing statements attention should be called to the fact that "national advertising" is a label which does not in practical usage mean exactly what it says: It would seem to refer only to advertising directed to the entire nation. This is not the case. In actual practice it comprehends those businesses which seek to sell goods or services beyond the confines of their immediate vicinity.

This is a general definition of "national advertising," as practiced, and is subject to some limitations. However, it will stand as a general definition.

"Retail advertising" represents the advertising efforts of a retailer in his vicinity. This will stand as a general definition. However, there are some outstanding exceptions. For example, when a manufacturer controls the advertising of a group of retail stores - sectionally or nationally - on his particular product, or when the owners of a group of retail stores - sectional or national in scope - advertise products which they own throughout their territory then "retail advertising" can be rightfully classed as "national advertising."

(2) Professional Specialists:

Professional specialists may be roughly classified in three groups - (a) those who call themselves advertising agents (b) those who can be called medium or package experts and (c) those known as counsellors in advertising practice.

(a) The Advertising Agent: Those specialists who call themselves advertising agents render their services principally in respect of discount mediums of advertising such as magazines, newspapers (at national rates), outdoor advertising (at national rates), radio advertising (at national rates), the business press (which circulates among wholesalers and retailers of branded products), and to a certain extent, industrial publications. (Such mediums are sometimes called commissionable mediums. In other quarters they are referred to as having "differentials." In this statement they are classed as discount mediums. An explanation of the

reasons for the use of this term "discount" appears later in this statement.) The work of the advertising agent, however, is not necessarily confined to the use of the above mentioned mediums of advertising. The nature of his work and the scope of his activity vary. At one extreme will be found the agent who confines his activity to "placing," - that is to say, the sending out of orders to mediums selected and determined in advance by the advertiser for the display of advertisements which the agent had no part in conceiving. At the other extreme will be found the agent who not only creates and writes the advertisements and selects the mediums, (subject to the approval of the advertiser), but who may go so far as to assist the advertiser in determining the name, nature and price of his product, train salesmen for the selling of that product, and assist in determining sales and other policies for the advertiser.

(b) Medium and Package Experts: In the second group of professional specialists will be found such individuals or organizations as -

- Direct-mail Specialists
- Industrial Advertising Agents
- Window Display Counsellors
- Window Display Installation Experts
- Car Card Advertising Experts
- Outdoor Advertising Solicitors
- Package Experts
- Syndicated Advertising Experts
- Premium Goods Specialists
- Exhibition Specialists
- Industrial Motion Picture Producers
- Radio and Program Talent Bureaus
- Electrical Transcription Producers & Distributors
- House-to-House-Advertising Distributors of Samples and Advertising Literature
- Home Economic Experts Who Disseminate Information Through Cooking Schools
- Cooperative Catalog Experts
- Directory Specialists
- Foreign Language Advertising Agents
- Foreign Language Radio Agents
- Theatre Program Experts
- Sampling Experts
- Coupon & Label Redeeming Experts
- Prize Contest Managers

Such individuals or organizations, as their names would imply, are usually specialists in serving or creating advertising concepts for individualized mediums of publicity. They may work directly in cooperation with the advertiser, or indirectly by collaboration with his agent. Specialists in this group, in some instances, obtain their compensation in the form of fees from the advertiser, and in other instances, they are paid by the medium in which they specialize. On occasion, if retained by advertising agents, they receive their fees directly from the agents and on other occasions they divide the discount with the advertising agent.

By way of illustration, a general advertising agent may hire a foreign language advertising agent to run a campaign of advertising in foreign language newspapers. The two agents for the work involved, may divide the publication discount or the general agent may pay the foreign language agent a fee.

(c) Counsellors in Advertising Practice: In the third group of professional specialists will be found such individuals or organizations as public relations counsel, sales and advertising consultants, sales and advertising research organizations, market research organizations, management engineers and free lance copy writers. Individuals or organizations which comprise the third group, in some instances, are in complete charge of advertising and/or sales for the advertiser and are compensated by him on a fee basis, or they may be paid, (with the prior knowledge and consent of the advertiser) by a division of discounts or fees with advertising agents or others whom they select to work with them. In other instances where their work is more limited, such individuals or organizations work under the direction of advertising agents and receive either a fee from the agents or a part of the agent's discount.

(3) The Salesman of the Advertising Medium:

Another factor in national advertising is the so-called "special representative," "special agent" or salesman of the advertising medium. The "special" represents a particular publication or group of publications at all times and makes no claim to impartiality.

The special representative obtains his income from the publication or group of publications which he represents. He may be paid a straight salary. He may be paid a commission in the true sense of the word. If he is paid a commission, the percentage usually ranges from 3 to 15, (the rate of commission usually depending upon the advertising volume of the publication - a low percentage usually being paid when an advertising medium has considerable volume and a high percentage when volume is lacking).

The special representative is obviously a special pleader for the particular advertising medium which engages his services. The advertising agent, who not so many years ago usually described himself as a "general agent," differentiates himself from the special representative, who not so many years ago called himself "a special agent," by declaring himself a special pleader for all advertising regardless of the mediums.

There exists a certain overlapping of work and a function between the special representative and others engaged in serving the advertiser. Brief mention will here be made of such overlapping.

Special representatives for some mediums of advertising may give, free of charge, part or all, of the copy service an advertiser desires. Some business papers, for example, will render this service to the advertiser or his agent.

Radio stations, in some instances, through their "specials," sell talent, script, and/or completed programs to advertisers in direct competition with advertising agents and program bureaus; in other instances they may give or sell such talent and programs to advertising agents and program bureaus, which latter, in turn, resell them to advertisers.

Some newspapers maintain advertising service departments which, in addition to writing copy for local distributors of nationally advertised products, at times conduct local direct-mail advertising campaigns for the advertiser, and in some instances, have gone so far as to act as salesmen for the advertiser by inducing local retailers and wholesalers to stock the advertiser's goods and to install window and counter displays in local stores for national advertisers.

Special representatives of magazines, large and small, offer, free of charge, to the advertiser or his agent, special services such as the preparation of copy, or the making of market analysis upon which copy appeal may be based.

Special representatives of advertising mediums perform credit functions which often duplicate such services offered by others serving the advertiser.

In the answer filed in 1926 by the Six Point League in the proceeding instituted by the Federal Trade Commission against the American Association of Advertising Agencies and others (Commission Docket 1251), the following statement appears, at page 8:

"Some of the members of the Six Point League as special representatives represent one publisher, others represent several or many publishers. In other cases, particularly where working on a commission basis, they guarantee to the publisher payment of all accounts by other agencies and advertisers for advertising published at their instance or with their approval, and frequently do all billing and collecting but at the rates established by the publishers."

(4) The Advertising Medium:

The last link in the national advertising chain is the advertising medium, or publisher of the advertisement. The generic term "advertising medium" or "publisher" as used in this statement includes such diverse forms of publicity as newspapers, magazines, outdoor advertising, radio broadcasting, street car cards, business papers, industrial publications, direct-mail advertising, window and counter displays and the like.

Advertising mediums fall into three general classifications: (a) discount, (b) discount in part, and (c) non-discount.

In the first classification are magazines, national newspaper advertising, national outdoor advertising, national radio broadcasting and national, sectional and state farm journals.

In the second classification will be found the business press, industrial publications, directories and catalogs.

In the third classification are direct-mail, window and counter displays, local newspaper advertising, local outdoor advertising, premium advertising, local radio broadcasting, local street car card advertising, etc.

The latest available figures with respect to volume in each of these three classifications, show:

(a) Discount mediums

Magazines	\$115,000,000	(1932)
Newspapers (national)	160,000,000	(1932)
Outdoor advertising	27,000,000	(1932)
Radio (national)	39,000,000	(1932)
Radio (electrical transcription)	8,000,000	(1932)
Farm Journals	24,800,000	(1931)
Total	\$373,800,000	

The foregoing figures with respect to magazines and radio include expenditures not only of manufacturing businesses but of retail chain organizations as well. Retail chain store expenditures in newspapers and the expenditures of manufacturers using exclusive dealers in newspapers are not included in the above because such organizations buy newspaper space at the generally lower local rate, which rate is not usually subject to a discount.

(b) Partly Discount mediums

Business and Industrial papers	\$23,750,000	(1931)
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Business directories and catalogs, in some instances, offer a discount. It has not been possible, however, to obtain figures on the volume of business done in that field, hence figures do not appear.

(c) Non-Discount mediums

Direct-Mail	\$343,000,000	(1932)
Window and Counter Displays and other sales and advertising literature manufactured by lithographers.	352,000,000	(1932)
Newspapers (local)	450,000,000	(1932)
Premiums	190,000,000	(1932)
Radio (local)	23,000,000	(1932)
Street car cards (national and local)	5,000,000	(1932)
Total	\$1,363,000,000	
Grand Total	\$1,760,550,000	

The following comments are in order on the above figures on non-discount mediums:

The volume of business done by motion pictures and the volume of business done in outdoor advertising at local rates are not given since figures were not available.

"Local" newspaper advertising is described in some quarters as "retail advertising." This definition, as previously indicated, is not adequate.

Certain businesses which buy space at local rates in newspapers do a national or sectional business. These businesses own retail stores and manufacture or have manufactured for them brands whose trade marks they own. Such products are advertised at the "retail" or "local" rate, in competition with products of manufacturers who do not own or control retail outfits and must therefore, pay "national" rates. There are also, in other instances, companies which have exclusive dealers' arrangements whereby certain dealers feature their product - that is the manufacturers' product - in the dealers' own advertising. Such manufacturers buy newspaper space also at the "local" rate in newspapers.

When those facts are considered, it is safe to estimate that at least 30 per cent of what is called local newspaper advertising, is "national" advertising - regardless of the fact that a lower advertising rate is usually paid.

The fact that national advertising placed in newspapers, at the local rate, has been increasing is to be found in the following statement from the brief of the American Association of Advertising Agencies in the matter of American Association of Advertising Agencies, et. al. (Docket No. 1251 of the Federal Trade Commission, Page 18, 1926.)

"Newspaper publishers," this brief declares, "with a very few exceptions, have a fixed rate card for national advertising and a substantially lower rate for local advertising. Generally, no agency commission is paid by the publisher on local advertising although there are exceptions to that custom.

"For all the time covered by this history of the advertising industry, it has been the custom for some advertisers and agencies to secure the local rate by routing advertising that otherwise would be national, through and in the name of a local dealer. There is nothing new or novel or abnormal about the process. Advertising agencies have contended publicly that a publisher should maintain one rate for all display advertising, but many agencies take advantage of the opportunity for the benefit of the advertisers when the volume of single insertions is sufficient to induce a real economy.

"The use of the local rate for advertising of a national character has been increasing during the past few years."

It is estimated that street car card advertising is about 85 per cent national; that about 30 per cent of local radio is in reality national advertising, and that about 80 per cent of window and counter display advertising is national. Probably 80 per cent or better of premium advertising is national advertising.

The most important comment on these figures, however, is this - that of the total amount of money spent for national advertising only 22.58 per cent goes into discount and partly discount mediums.

With these statements we bring to a close our endeavor to give a background picture of the business of national advertising.

(C) An Analysis of the Business of the Advertising Agent

Against the foregoing picture of the business of national advertising, it is now necessary to give a more detailed presentation of the advertising agency business.

(1) History and Method of Operations:

In the early days of the advertising agency business, the "agent" was a space-broker or concessionaire. He bought space at one price and sold at another. The custom of buying space in bulk and selling it at retail was widespread. Actual preparation of copy was for some time outside the "agent's" province. In the course of time, the publisher, sensing the value of advertising, began to put space-

brokers on equal terms, first, by standardizing the rate charged for his space and later by allowing the broker in so far as his publications were concerned, a uniform percentage on the rate of his publication, which percentage represented that publisher's selling cost. Percentages allowed by different publications varied. Under this development, recognizing the growing needs of advertisers, "agents" began to lean more and more on the advertiser - selling themselves to him as experts who knew what publications to buy and who knew how to write the messages to be inserted therein. From that time on the advertising "agent" became more and more a trusted adviser or employee of the advertiser.

An important statement which shows the transition of the advertising "agent" from space-broker or concessionaire to agent of the advertiser is found in a letter which Mr. F. Wayland Ayer, founder of N. W. Ayer & Son, one of the country's large advertising agencies, wrote to a trade journal in the newspaper field, namely, "Editor & Publisher" and which appeared in the March 26, 1921 edition of that publication. In that letter Mr. Ayer declared his organization, since 1873, had operated on the principle that it was their duty to serve the advertiser and not to secure business for any paper or papers. "Naturally," wrote Mr. Ayer, "the basis of remuneration for this service then became a matter of mutual agreement between our clients and ourselves. None other than we could know the cost of the service." A complete copy of Mr. Ayer's letter follows:

Philadelphia, Pa., March 21, 1921

To "Editor & Publisher":

For the good of advertising it seems desirable that there should be a clearer understanding of responsibility in the relations between publishers and advertising agents.

Some 48 years ago N. W. Ayer & Son reached the conclusions that agency relations were capable of a better interpretation than any then recognized; that we could best serve publishers and ourselves by devoting all our energies to making advertising pay the advertiser rather than in specific endeavor to secure business for any paper or papers; and that thereafter it should be the sole business of this agency to serve its clients. Naturally the basis of remuneration for this service then became a matter of mutual agreement between our clients and ourselves. None other than we could know the cost of the service. None other than the client could judge its value to him.

Forty-eight years' experience has confirmed to us the value and soundness of this principle. No more now than in 1873 do we concede the right of a publisher to fix the rate of remuneration which our clients shall pay us for our services. This is not the publisher's responsibility.

On the other hand, it has been our policy never to attempt to influence the rate of discount allowed by publishers to advertising agents. That the agent renders a service to publishers in the development of new advertising and in the assumption of credit risks, is a recognized fact, and that this service should be rewarded by a differential which gives the agency an advantage in the purchase of space is only fair and just.

But the advertising agent no longer represents the publisher. The publisher has his own representative, and some publishers have many very capable men thus employed. The agency commission has therefore ceased to be compensation for the selling of space as in the early days when no copy preparation was involved, and when responsibility for payment of an account ceased when collection from the advertiser was impracticable. The so-called agency commission is not therefore a true commission. In reality it is a differential discount to the agent because he is an agent and primarily because he assumes all responsibility for collection, and for the credit risks involved. Has it ever occurred to you that the differential discount generally prevailing is too large, and that this may be the root of some of the evils which beset the advertising business today?

Apparently it is assumed by many that the agency differential pays for copy preparation and other services to the advertiser; but the advertiser has no voice in fixing the amount thus paid. Surely this is not an equitable arrangement. If the agency differential exceeds the value of the agency to the publisher the excess is paid by the advertiser, is it

not? But it is included in the publisher's rates and represents an expense which, if eliminated, would enable the publisher to make proportionate reductions in his charges for advertising space.

From our viewpoint it seems that the agency differential should be fixed by the publisher as near as may be to measure the value of the agency to the publisher, and beyond this the agent should look for remuneration to the client whom he serves. This would confine to the publisher the responsibility which belongs to him and relieve him of the necessity of trying to fix a differential which shall cover services of varying character and value.

To the publisher, in our opinion, solely belongs the responsibility of fixing rates for space in his publication. From time to time N. W. Ayer & Son have been asked to join in representations to publishers regarding rates generally, but this we have refused consistently to do. The publisher is in the position of the manufacturer. He alone knows his cost of production; he alone can determine the amount which he must charge for his space. If his rates continue too high or too low, the ordinary laws of business will operate to eliminate his publication.

The publisher who is able to reduce rates along with the current reduction in many other lines of business is in a fortunate position. Whether this reduction takes the form of a revision of rate card or an increase in circulation value does not matter. If, by reason of reduced costs of production, saving in soliciting expense or lessening of overhead, the publisher can give greater value per dollar expended in his publication, he is performing a service to advertisers which will work to his own advantage in the end.

But, as we have pointed out, that is the publisher's responsibility in which we cannot interfere. In selecting publications for the advertising of our clients, we must consider each individually for its value to do the particular work in hand. We may hold an opinion that the rate of a particular publication is too high and this would naturally influence our course in regard to that publication.

Such exercise of judgment is a part of our responsibility to our clients. But that is far from treating publication rates as a group matter or attempting to say what they shall be.

It is apparent that in this letter we have not attempted to discuss all the factors that bear upon the subject of agency and publication relations. We have concerned ourselves only with the basic principles, which, if clearly understood, mark quite clearly the line where responsibility begins and ceases. Given such an understanding, we believe that each of us will be able to do his work more efficiently; the publisher to give utmost value to reader and advertiser; the agency to serve clients with the greatest possible effectiveness.

"Making advertising pay the advertiser" points the only way to prosperity for both publisher and agent.

Another important document that indicates the change of advertising "agent" from space-broker to the employee of the advertiser is to be found in "The Agency Service Standards," as adopted by the Four A's, at its Second Annual Convention in New York, on October 9, 1918. Those standards were set forth as follows:

Agency service consists of interpreting to the public, or to that part of it which it is desired to reach, the advantages of a product or service.

Interpreting to the public the advantages of a product or service is based upon:

- (1) A study of the product or service in order to determine the advantages and disadvantages inherent in the product itself, and in its relation to competition.

- (2) An analysis of the present and potential market for which the product or service is adapted:

As to location
As to extent of possible sale
As to season
As to trade and economic conditions
As to nature and amount of competition

- (3) A knowledge of the factors of distribution and sales of their methods of operation.
- (4) A knowledge of all the available media and means which can profitably be used to carry the interpretation of the product or service to consumer, wholesaler, dealer, contractor, or other factor.

This knowledge covers:

Character	
Influence	(Quantity)
Circulation	(Quality)
Physical Requirements	(Location)
Costs	

Acting on the study, analysis and knowledge as explained in preceding paragraphs, recommendations are made and the following procedure ensues:

- (5) Formulation of a definite plan.
- (6) Execution of this plan.
 - (a) Writing, designing, illustrating of advertisements, or other appropriate forms of the message.
 - (b) Contracting for the space or other means of advertising.
 - (c) The proper incorporation of the message in mechanical form and forwarding it with proper instructions for the fulfillment of the contract.
 - (d) Checking and verifying of insertions, display or other means used.
 - (e) The auditing, billing and paying for the service, space and preparation.
- (7) Cooperation with the sales work, to insure the greatest effect from advertising.

Analysis of the foregoing description indicates that the modern advertising agency, in the written opinion of the Four A's, exists for the purpose of rendering a service to advertisers. There is no statement in that outline of agency service which indicates that an agency is in the employ of advertising mediums. Services that are listed in this analysis are rendered to, and in the interest of the advertiser as client and are, in fact, so worded as to imply impartiality toward all mediums of publicity. It is an ideal picture of the scope of agency service and can be accepted as such. It is thoroughly consistent with the view taken in Mr. Ayer's letter, previously quoted.

Further, it is consistent with the view expressed by the American Association of Advertising Agencies from their brief to the Federal Trade Commission in 1926, previously quoted in this statement when in speaking about the practice of routing advertising, that otherwise would be national, through and in the name of a local dealer in order to secure the advantage of local rates - which rates generally are lower than the national rates - the Association stated:

"There is nothing new or novel or abnormal about the process. Advertising agencies have contended publicly that a publisher should maintain one rate for all display advertising, but many agencies take advantage of the opportunity for the benefit of the advertiser when the volume of single insertions is sufficient to induce a real economy." (Underscoring ours.)

In other words if the agent were the agent of the publisher he would fight to obtain the highest rate for the publisher and would not here publicly admit that he endeavors to seek the lowest rate for the same space in the interest of economy to the advertiser - his real employer.

Research of existing cases of record by competent legal counsel, undertaken for the Association of National Advertisers as part of a study of "agency compensation" which study is explained later in this statement, definitely shows that the modern advertising agent - is in law - the agent of the advertiser. A brief outlining that contention was filed with the Legal Division of the N.R.A. on January 5, 1934 at its invitation. Continued research has upheld that contention and therefore a copy of that brief on the legal status of the advertising agent is included as Part II of this statement.

Reverting now to the question of scope of agency service: It must be said that it should not be assumed that agency service, as outlined by the Four A's, is the service rendered to each and every client of an advertising agency.

It can be stated as a fact that: There is no standardization of advertiser demands upon agencies. The scope and the abilities of advertising agencies and the needs of advertisers are as varied as the individuals who are to be found in agency organizations and in the organizations of manufacturers who use advertising.

(2) Agency Income:

The major part of the income of advertising agents is represented by discounts from advertising mediums. This being so, an explanation of the "discount system" is in order at this point.

This system is generally understood and explained, as follows: Certain advertising mediums in offering their facilities for sale do so under a two rate plan: (1) "gross" rates and (2) "net" rates. The "gross" rate - a higher rate - is the price supposedly available to the advertiser and the "net" rate is the rate supposedly available only to the advertising agent.

The difference between the lower "net" rate and the higher "gross" rate is a discount. The generally accepted theory among agents is that it is allowed to the agent for his sales work for and credit responsibility to the particular medium used.

The actual money represented by this discount usually comes into the agent's hands in the following manner. The agent bills the advertiser, in whose name the space has been ordered, at the "gross" rate of a particular advertising medium and then transmits to that particular medium the amount called for by that medium's "net" rate.

Therefore the discount is in reality paid directly by the advertiser to the agent and the publisher never received this money. It is hardly accurate, then, to term this compensation a commission since a commission is ordinarily regarded as a refund of part of the selling price passed back by the seller to the salesman or sales agency bringing the sale about. It is properly to be regarded as a discount - a trade discount much like that which the retail merchant works on.

The difference between the "net" rate and the "gross" rate - percentage-wise - remains constant in a particular medium regardless of the volume of space an advertiser buys through his agent.

In terms of percentages, the difference between "net" rates and "gross" rates varies not only between classes of mediums, but also between mediums within a given class.

It is safe, however, to make the following generalization: It is usually in the neighborhood of 15 per cent.

Summing up all the foregoing we find this: The difference between the "net" rate and the "gross" rate of an advertising medium represents the compensation received by agents from advertising mediums as "a discount." This discount supposedly represents a sales expense of the medium and is intended to cover the cost of the agent in serving the particular advertiser for whom the space was bought. Theoretically, neither agent nor advertiser have a voice in determining what it should be. (In reality agents have determined it since 1918 as will be shown later.)

This, then is what advertising agents and others describe as "the commission system."

This system which attempts to explain the major source of income of the advertising agent has, in actuality, been changed, as will be shown later in this statement. For the present let us accept it, as given and consider now other sources of agency income.

Among other sources of income open to agents is payment for work done in respect of advertising that appears in non-discount mediums, such as street car cards, newspapers at local rate, direct-mail, window or store display, sampling, etc. Work done with respect to advertising through such channels may be compensated for:

- (1) A flat service charge which bears no relationship to the amount of money spent.
- (2) A lump sum which represents an agreed upon percentage of the amount of money spent in a medium.

Further sources of income open to agents are: A fee, or percentage of expenditures on art work, engravings, and radio talent costs. (When a percentage is charged the rate varies and is determined by the agent alone or in agreement with the advertiser.)

With respect to engravings, in addition to charging the advertiser a commission as a service fee for handling engravings, the agent may, and does in some cases, retain for himself another commission, known as a "trade discount" - which discount is available to advertisers who buy direct from engravers as well as to advertising agents.

In the matter of art work and radio talent, agents have, at times, acted as brokers buying at one price and selling to the advertiser at another. Generally, however, the practice is to charge at the rate which agent and artist or talent determine; and then, depending on circumstances, to charge a service fee or commission as purchasing agent. Practices with respect to art work, engravings, and other mechanical parts contributory to publication advertising, and to talent costs for radio, are varied. The following summaries of some reports in the files of the A.N.A. support the foregoing assertion and give a quick picture of the situation.

Of 117 advertisers purchasing engravings and electrotypes in 1930, 97 received all discounts and 20 paid gross prices. These discounts in that year ranged as high as 33-1/3 per cent on engravings, and as high as 50 per cent on electrotypes. Of the 20 advertisers paying gross prices, 11 paid a service charge or purchasing commission to advertising agents, ranging from 15 per cent, to as high - in one case - as 25 per cent.

In another report on payments by advertisers to agents for purchasing radio talent, which payments, of course, would be in addition to the income the agent would receive from broadcasting stations for time used, we find that, out of 45 companies, 21 were charged for work involved and 24 were not.

In addition to income from such sources as have just been explained, the advertising agent, at times, also received income by selling research work to both advertisers and non-advertisers, and by selling the services of some of the various

specialists, such as were listed at the outset of this report and who may or may not be on his payroll, to advertisers. On research he usually works on a flat fee basis determined by him and the advertiser.

There are agents who receive income in the form of fees - agreed upon between advertiser and agent for work done on advertising in discount mediums, when discounts are too small to give the agency a profit.

There also are agents who own, directly or indirectly, businesses which may make a profit for them by supplying materials and services to advertisers through the agents which own them. Reference is made particularly to the ownership of printing plants and engraving businesses by agencies.

And finally an agent may advance from his own pocket, money to pay an advertiser's bill for space, material, or services contracted for in that advertiser's name, and obtain a cash discount from the seller. If he retains that discount for himself, he has an income that arises from the assumption by him of a banking or money lending service.

Before bringing this statement on agency history, operations and compensation to a close, the subject of cash discounts should be explained. It is customary for publishers of newspapers and magazines, (and for the owners of some other mediums), to allow a cash discount, usually of 2 per cent for payment of the publisher's account within the discount period agreed upon. This discount is always based upon the publication's net rate.

(D) Dissatisfaction with the Discount System of Agency Remuneration

(1) Statements of Advertisers, Agents and Mediums:

There are many persons owning advertising mediums, as well as agents and advertisers who are dissatisfied with the so-called commission system of agency remuneration.

As advertising has become more and more a part of the selling machinery of the advertiser, dissatisfaction has seemed to increase.

The A.N.A. for many years has expressed its dissatisfaction with the agency compensation system by resolutions. Individual advertisers, members and non-members, have also expressed their dissatisfaction in print, and by action.

Many statements from individual advertisers could be presented to support the foregoing declarations regarding dissatisfaction on the part of advertisers. We shall, however, confine ourselves here to one fairly recent declaration on this subject, namely, that made by Alfred P. Sloan, Jr., President of General Motors Corporation, as given in "Printers' Ink" of July 28, 1932:

"I am not against advertising agencies per se," wrote Mr. Sloan. "I think," he continued, "they perform a necessary and valuable service to merchandisers. My quarrel with the set-up lies in the fact that fifteen per cent applied to large accounts is unfair to the large advertiser; it promotes inefficiency through the establishment of services already performed by the advertiser personally.

"In the case of advertisers having smaller appropriations, fifteen per cent is not sufficient to return the cost plus a profit to which the agency is entitled.

"I feel very strongly, and have felt for many years past, that the size of the advertising account, the service necessary and other conditions, are a necessary consideration in determining the compensation to which the agency is entitled."

In a letter which appeared in "Printers' Ink" in the issue of June 30, 1932, Mr. Sloan also made this statement:

"I feel...and have felt ever since I have been connected with advertising problems, that the relationship established by the publishers with respect to the advertising agency, is unsound, uneconomic and unfair."

Attention is specifically directed to the fact that objections to the agency compensation system exist among heads of corporations, as evidenced by the foregoing statement by the President of General Motors Corporation because there is in existence an unsigned memorandum circulated by the American Association of Advertising Agencies on Dec. 16, 1921, which charges that efforts to change the theory of remuneration represent only the desire of a small group of "advertising managers" who feel that their positions would be more important if the advertising agencies were eliminated.

Whether or not such an argument is again revived, anonymously or openly, it is here and now the desire of the A.N.A. to state on behalf of its membership that there exists no desire to eliminate advertising agencies.

The advertising agency - a cooperative personal service - is in the opinion of the A.N.A. a sound and valid idea that should be encouraged and supported in such a way as to give the agent the greatest opportunity for his talents and ability - a greater opportunity than he now enjoys.

Further evidence of dissatisfaction with the agency compensation system is to be found in a study called "Advertising Agency Compensation in Relation to the Total Cost of Advertising" by James W. Young, for many years an advertising agency executive, former president of the Four A's, and now a member of the faculty of the University of Chicago. The Young study, according to current reports, came into existence as the result of endeavors on the part of a small group of advertisers, magazine publishers and agents to know more about the agency remuneration system.

As still further proof of advertisers' dissatisfaction, the following fact should be cited. The A.N.A., after an analysis of the Young Study had been made, rejected it and authorized a new study of the subject of agency compensation. This study has been under way for some months. It seeks to present the story of this compensation system in theory, law and actual practice.

It has been indicated that dissatisfaction with the agency system of remuneration has not been confined to advertisers. In support of this statement attention is called to the following facts. First, consider the agents:

The letter in "Editor & Publisher" of March 26, 1921, from the late F. Wayland Ayer, long the active head of N. W. Ayer & Son, previously quoted in this statement, shows in unmistakable language that at least one agency long ago publicly refused to allow any medium to determine the compensation it should receive from its clients.

Ernest Elmo Calkins, long honored by other advertising agents for his contributions to advertising, writing in "Nation's Business" of September 19, 1932, plainly advocated the need for a better plan of agency remuneration if the agency's scope of usefulness was to be broadened.

In 1931, Dr. William J. Reilly, who had been director of research for the Erickson Company, an advertising agency now part of the McCann-Erickson Company of New York, issued a book called "Effects of the Advertising Agency Commission System" urging a change in methods of agency compensation. In urging the need for such change, Dr. Reilly asserted the present commission system of compensation was responsible for:

1. Undue emphasis upon space advertising in the advertising program.
2. Undue emphasis upon advertising in the marketing program."

With respect to the fact that advertising mediums have not been completely happy with a discount system of agency remuneration, attention is directed to the following passages from the so-called "Young Report on Agency Compensation."

"In May, 1921, "Editor & Publisher," leading newspaper and Trade Journal, published an editorial advocating payment of the agent by the advertiser." (Page 40 of Young Study.)

"In 1922, a movement started among Southern newspaper publishers to cut the agency commission in half, but failed of adoption in their association." (Page 41 of Young Study.)

The foregoing citations represent but a part of the evidence on dissatisfaction with the discount system that exists among advertisers, mediums and agents.

Much more could be adduced. Sufficient evidence has been given in these citations and exhibits however to show that the system of agency remuneration is a highly controversial subject and that in that controversy, the buyer is not alone on the objecting side and not alone in being dissatisfied.

From the foregoing statements on dissatisfaction it might be assumed that there has been no constructive action on the subject. Such an assumption is not warranted.

This particular system of compensation has been changing and has been highly modified in actual practice. One of the major purposes of the study on agency compensation now under way by the A.N.A. is to discover the extent and variety of modifications dictated by practical experience and initiated by either advertiser or agent. In the absence of the information which that study seeks to bring forth no statements can be made concerning the extent of the modifications. We can, however, at this time offer the following statements on some of the various ways in which the agency system of compensation has been changed in actual application.

To do this we must first examine the course that has been followed by advertising agents and advertising mediums with respect to the agency remuneration system. It has previously been emphasized that the basis theory behind agency remuneration is this:

An agency's gross income for serving an advertiser represents the sales cost of the advertising medium or mediums in which that advertiser's copy appears and it is a function of the medium to determine whether a particular agent becomes part of the system and receives the privilege of buying at net rates.

In order to make this theory seem real, certain associations, created by publishers, have taken on a function labeled "recognition." It is generally assumed that "recognition" from such bodies determines whether or not an agent is qualified to receive compensation as the sales agent of advertising mediums.

This assumption is incorrect and has made "recognition" one of the mysteries of advertising. There is, in actuality, no machinery in existence in the advertising field which is qualified or authorized to act as a "recognition" body of agencies for any and all advertising mediums.

Consider for example, the matter of recognition in the magazine publishing field. In that field there is only one body which deals with that particular subject, namely, the "Periodical Publishers Association." So far as we know that association has only three members - that is to say, three publishing houses. It has, so far as we are able to determine, no authority, nor does it assume such authority, to act for any magazines published by companies which are not members, nor does it, to our knowledge, know the selling costs of all magazines.

There are in this country, according to Ayer's Directory 3,039 magazines. No agreement any advertising agent might sign with the Periodical Publishers Association could make that agent's actions binding with respect to magazines not members of that association. The membership of the Periodical Publishers Association is infinitesimal in comparison with the whole field of magazine publishing.

These same remarks apply, in varying degrees, with respect to the other discount mediums.

Much more can be said on the subject of recognition but we believe that sufficient information has already been given to indicate that advertising mediums have not created machinery, which would enable them to know the selling costs of advertising mediums, nor have they created or maintained organizations which are authorized and empowered to act for all of any given type of advertising medium. "Recognition," in reality it can be safely said, simmers down to whether or not an advertising agent has any business in hand.

Any assertion that groups of mediums had come together to determine their selling expense is open to serious legal implications for the Federal Government has in the past forbidden

any such combined action in many fields of endeavor. It has, in fact, expressly forbidden it in one field of advertising - namely - outdoor advertising.

The facts in this matter, then, we believe are these: Advertising mediums, to our knowledge, have never pooled sales costs and have never through concerted effort determined that their sales cost should represent a given discount.

Their practices with respect to payments made to special agents or special representatives for securing business show that their sales costs are highly varied. (It will be recalled, as pointed out before in this statement, that some mediums pay salaries and some commissions, which commissions, generally speaking, vary from 3 to 15 per cent of volume secured.)

Consider now the course which agencies have followed with respect to the discount system. There exists a printed form called "Standard Contract," endorsed by the Four A's which that association urges members and non-members to use in dealings with newspapers, magazines, farm journals and business papers.

Sub-division A of Section 7 of that form reads as follows:

"The agency agrees that it will not rebate to its client any part of the commission allowed by the publisher."

This sub-division is significant, in our opinion, in this so-called standard contract, which contract, by the way, does not explain the discount system of remuneration. Its significance lies in the fact that the agent, on his own initiative, is endeavoring to regulate the relations between two principals.

That advertising agents have, either willingly or unknowingly, by official action shattered the theory that the selling costs of an advertising medium should be the determinant of what advertisers should pay for agency service, is to be found in a statement made on pages 37 and 38 of the Young Study, previously referred to. That particular statement reads:

"Meantime, as agency service continued to expand, and specialized techniques and talent for it developed, agencies again found their costs rising and their profits shrinking. In 1918, a committee of the American Association of Advertising Agencies began making representations to magazine publishers for an increase in the commission from 13 to 15 per cent, and this was eventually adopted by all the principal magazines. Another committee of the same Association then sought to bring about a standardization of the 15 per cent commission, with a 2 per cent cash discount, among publishers of all kinds, advocating a reduction of higher commissions where these existed, and an increase to this rate where, as with some metropolitan newspapers, a lower one was paid."

In the same study, on page 36, Mr. Young makes the following statement:

"By 1912 the competition and expansion in agency service had so increased that a 10 per cent commission no longer gave adequate compensation to the agent who met all the new service standards. Some of the leading agencies were charging fifteen per cent on the net, which made their charges above the publisher's card rate where the commission was ten per cent, but below the card rate where the commission was fifteen per cent, as it was with most newspapers. Becoming convinced that agency service, as it has been developed, required a higher commission, magazine publishers began to change from a commission of 10 per cent with 5 per cent cash discounts; and these latter figures soon became standard throughout the magazine field. As a commission of 13 per cent on the publisher's card rate yields the agent the same revenue as 15 per cent on the net rate, all agency service was again put on the same price basis, so far as the publisher could influence it."

We call attention to the fact that in the last quoted statement, concerning the year 1912, it is set forth that the differential was influenced by the publisher. We call attention to the fact that as a result of the action of a Committee of the American Association of Advertising Agents, as set forth in the first quoted

statement concerning the year 1918, the differential was determined by advertising agents. In other words, in 1918 the publisher's selling costs theoretically were no longer the determining factor. The determining factor became the needs of the advertising agency business at that time.

(2) How Discount System Has Been Modified in Practice:

Over a long period of years, some advertisers have modified the advertising agency compensation system by creating advertising agencies which they own, or by buying control of established agencies. In taking such action, advertisers have been moved by two desires - sometimes by one of the two and at other times by both. These two desires have been (1) to control and lower the costs of advertising as a part of their selling process and (2) to obtain a service which they considered necessary for the success of their own business, which they could not obtain otherwise.

An advertising agency that is owned by an advertiser is frequently called a "house agency" by some agents. Ownership of an advertising agency by an advertiser is held, by some agents, to be dishonorable and unethical.

Other changes in the system have been brought about by advertisers (1) in union with agents or (2) through the acquiescence on the part of agents or (3) on the initiative of agents, in the following manner:

Upward Adjustments:

The amount received by many agents in the form of a discount between the net and gross rates of publications has often been adjusted upwards by advertisers - in the form of additional payment for service - when representations have been made to them by advertising agents that additional income was necessary. Usually such upward adjustment has been made by the payment of a flat amount, which amount can only be described as a fee agreed upon by both advertiser and agent or demanded by the agent, as necessary to make the account profitable to the agency. Such adjustment upward is considered an ethical practice and is gladly followed in many instances by both advertiser and agent.

Extra Services:

When discounts received by an agent on a particular account represent an amount which, to the minds of the individual agent and the particular advertiser involved, are too large for advertising service, alone, then the advertising agent, instead of offering a cash adjustment, or after refusing to make such an adjustment on moral grounds by declaring that such an adjustment constitutes "rebating" may offer to supply a broader scope of service, or the advertiser may demand such service. In such a situation, the agent becomes more than an advertising agent in order to earn his discount. This practice is generally considered as "ethical." It is not called "rebating."

"Rebating" in law represents an arrangement, between parties of adverse interest. Court records show the modern agent to be the agent of the advertiser. This being true they are not parties of adverse interests. The word "rebate" is therefore a wholly misleading word in this situation.

Moral grounds so often adduced as a reason for refusal to make adjustments have no foundation due to the fact that agents themselves, and not publishers, according to Mr. Young, a former president of the Four A's, have set the present rate of discount. If agents can set the rate at one time without being immoral surely they can change at another without being charged with an immoral act.

Downward Adjustments:

Cash adjustments downward of the agency discount have taken place by two main processes: (1) by agreement between the advertiser and agent to alter the percentage which the agent is to receive on the Billing involved and (2) by the substitution of a fee for the percentage on the Billing arrangement.

Such downward adjustment of discounts which, in some cases is initiated by the advertiser and in other cases by the agent and in still other cases by both agent and advertiser is described by some agents as unethical and dishonorable. It is as

previously indicated unqualifiedly labeled "rebating." It is so labeled even though those who give it that term of opprobrium are willing to admit an agent's service is highly variable and the needs of individual advertisers are highly variable. It is so labeled even though those agents who give it that name may themselves indulge in the practice of rendering service outside of the scope and province of advertising to large advertisers - services for which they - the agents - must expend cash. (The offense against ethics, it seems, lies in the passing of cash from agent to advertiser but not in the passing from agent to advertiser of the materials or the services that cash buys.)

When agents are dependent solely for their income on discounts allowed by publishers, they run the risk of losing heavily on some accounts and of gaining large profits on others. Figures that support this assertion are to be found to a limited extent on pages 140, 141 and 142 of the study made by James W. Young, previously mentioned. In brief, then, the discount system with its present percentage rate, actual experience shows, results in doing business at a loss, in some instances and in doing business at a large profit in other instances.

The foregoing statements concerning dissatisfaction with the discount system of agency compensation are very properly confined to the agency business in the United States. However, we believe it is in order to point out here that practically the same troubles and difficulties have been faced in England with respect to the advertising agent, and that changes are taking place there in methods of the agent's compensation. For this reason we quote the following from a recently issued book called "Advertising Agency Organization and Accounts" by A. Essex-Crosby, certified accountant, published by Gee & Company, Limited, of London, England:

"For the most part the arrangements made between an advertising agency and its clients turn upon the orders ultimately placed with publishers and others for advertisement space in periodical publications, a long-standing practice being for the agency to retain the trade discounts allowed by publishers on such orders as remuneration for their services. In some cases the agency undertakes to provide all the necessary illustrative matter and copy and to meet the costs of reproduction material out of the proceeds of the trade discounts on the space bought, though these costs would generally be the subject of separate charge. In recent years, however, a number of agencies have adopted another basis for their terms of business with clients, under which the latter are charged only with the net cost of space bought on their behalf, the agency remuneration taking the form of a fixed percentage commission added to the space cost, and preparation charges being dealt with in a similar way. This arrangement places the agency in a more satisfactory position vis-a-vis the client as a distributor of amounts placed at its disposal for specific purposes, and removes the agency from the situation of a broker acting on behalf of the publishers."

We draw particular attention to the following sentence in the above quoted statement:

"In recent years, however, a number of agencies have adopted another basis for their terms of business with clients, under which the latter are charged only with the net cost of space bought on their behalf, the agency remuneration taking the form of a fixed percentage commission added to the space cost, and preparation charges being dealt with in a similar way."

(3)

Why Agency Service Is Not Properly The Subject Of Standardization

The advertising agent renders a personal service, as has been disclosed by adjudicated cases before the Board of Tax Appeals of the Treasury Department at Washington, and by at least one Federal District Court case. In asking that the National Recovery Administration grant to him a fixed percentage computed upon the

dollar volume expended for his clients in discount mediums of advertising, the agent is asking that a price be fixed for this service.

In any consideration of this endeavor to fix prices for personal services, the following remarks of an Iowa Court in the case of *Carnego vs. Crescent Coal Company* (163 Iowa 194; 143 N. W. 550) are pertinent:

"Services," said the Court, "personal or otherwise, are so varied and differ so much in their nature and value, that general application of the principle pertaining to the proof of value of property ought not to obtain. It is a matter of daily observations that prices paid different persons for like services differ radically. There is no general criterion, such as the open market, by which to ascertain what the rendition of a specified service is worth. This often depends on experience, or environment, and frequently on opportunity." (Underscoring ours.)

Elsewhere in this statement, it has been pointed out that, according to the Young Report agents have, in times past, endeavored to place all agency service on the same price level - a level determined by 1918 costs of doing business - as shown in an article entitled "Many Publications Have Increased Commissions to Agents," which appeared in "Printers' Ink" of September 19, 1918 on page 77.

In other words, price-fixing has taken place with respect to a personal service and government sanction is now sought to perpetuate it.

Price-fixing, for a personal service, should not be sanctioned by the Federal Government. Advertising ingenuity is as valuable as the strategy of the advertising campaign. Because of the very nature of the services rendered by the advertising agent, it is not a field into which standardization of values can, or should, enter.

The advertising agent, or other service expert, who produces valuable sales concepts, should be, and is, properly compensated. His less worthy brother should be paid what he is worth. All agents are not equally equipped in ability. Not only do the mental ability and physical equipment of agents differ, but their several accounts require a varying degree of service. In the face of these variables, which can offset one another only by the merest coincidence, it would appear thoroughly unreasonable to set a uniform rate of compensation. Further, by attempting to enforce an arbitrary charge, regardless of the amount or quality of service rendered, and without consideration for the needs or requirements of a given advertiser, the proposed code would place a premium upon inefficiency. No maximum discount is suggested in the proposed code.

Although quantity discounts are the common rule in American business, no such discounts would be allowed the advertiser by the agent. The failure of the agent to propose such discounts in his code is worthy of examination. Those agents who have been special pleaders for advertising as the cure for most of the distribution problems of the manufacturer argue that: (1) advertising increases sales; (2) when sales increase, the advertiser can purchase his raw materials in greater volume; (3) by purchasing in greater volume the advertiser is able to obtain quantity discounts; (4) by obtaining quantity discounts the advertiser is enabled to lower his price to the public and beyond the reach of inefficient competition.

If this argument correctly states the case for advertising, it should suggest to the mind of the advertising agent the inequitableness of a situation which gives the advertiser a quantity discount on his raw materials, but does not permit him to obtain a quantity discount upon advertising agency service.

Many advertising agents have stated time and again that theirs is a business in which it is impossible to maintain cost records. Nevertheless some agents have succeeded in keeping such records, in order to determine the productive capacity of their employees, or to apprise themselves of the profit accruing to them upon different types of advertising.

The fixation of a standard of agency compensation would perpetuate the mystery about agency costs, when the knowledge of such costs is now urgently needed to promote efficiency in the advertising process.

In weighing the question of whether the advertising agent should be permitted to fix a standard of compensation with government sanction, the N.R.A. should

examine into his method of computing profits. In a book entitled, "Papers of the American Association of Advertising Agencies," published by the Ronald Press in 1927, the following statement is attributed to John Benson, present President of the Four A's:

"Fifty-nine of our members have furnished profit and loss statements for 1925, showing volume of business, gross profit earned, net profit earned, and credit losses. Twenty-eight of them report classification of expense. These figures come from agents of all sizes and are very representative. They show:

"An aggregate billing of \$104,831,931.59; gross profit of \$13,414,255.27 or 14.29%; net profit of \$2,542,422.20, or 2.63%."

The "aggregate billing" referred to is the "aggregate cost" to advertisers in whose name the space is purchased. What is referred to as "gross profit" by Mr. Benson is in fact "gross income." Otherwise stated, the sum of \$13,414,255.27 instead of being defined as "gross profit" would be correctly defined as "gross income."

That being so, the "net profit" of \$2,542,422.20 is 18.9 per cent of the agent's "gross income."

It should be likewise noted that the so-called "net profit" is based upon "gross income," and not upon capital investment, as is usual in business. If investment were used as a criterion, it might well turn out that "net profit" in many agencies would run to several hundred per cent of the investment.

(4)

Summary of Statement

In the foregoing pages, we have attempted to outline the scope and purpose of national advertising; to define in a general way the functions of the various factors which enter into the national advertising campaign; to analyze the business of the advertising agent, and to demonstrate the long-standing dissatisfaction with the method by which the agent is compensated for his services.

It has been shown that agency services differ in respect to different types of businesses, and that such services are as variable as the professional ability of the agents themselves. Likewise, it has been pointed out that the amount of service required by advertiser A differs substantially from the amount of service required by advertiser B.

We have defined the so-called "rebate" in the advertising business, pointing out that the practice adverted to is fair and honorable, and this word of opprobrium is incorrectly used. It does not fit the situation.

We have shown that the agent by his course of conduct has shattered the theory that the publisher fixes his compensation by demonstrating:

- (1) That agents have directly influenced publishers in fixing the amount of their discount.
- (2) That many collateral charges are made upon a theory of compensation which differs from the discount system.
- (3) That one of the oldest and largest agencies in the United States has for many years billed its clients upon the theory that the publisher's net rate is his only effective rate and that other agents have, either by cash adjustments or by undertaking work outside of the province of the agency business without requiring increased compensation, made the publisher's net rate his only effective rate.

We have shown that agents have made it the usual and widespread practice to compute cash discounts upon the publisher's net rate, thereby again making the net rate the publisher's only effective rate.

We have shown that the discount system, is in force, generally speaking in mediums which receive only 22.58 per cent the total estimated national advertising expenditure.

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In perspective, and in the light of the Federal Government's policies, the view of the agents, as expressed in their proposed code, appear arbitrary and inflexible, and not susceptible to adaptation to the principles of the New Deal.

Sanction of provisions with respect to charges agencies make to advertisers would:

- (1) Prevent an advertiser from making equitable and fair arrangements with his agent.
- (2) Give government sanction to a movement started in 1918 whereby the agent of one principal (the advertiser) dictates prices to the other principal involved in the advertising process, namely the advertising medium.
- (3) Sanction and make static a price set for 1918 costs of doing business at a time when such costs have changed considerably.
- (4) Discourage cost-accounting in the agency business.
- (5) Permit agencies to do business at a loss on some accounts and to make excessive profits on others.
- (6) Create unfair competition between discount and non-discount mediums. This because certain mediums, due to their inherent nature cannot work under a two-rate plan.
- (7) Prevent a decrease in the cost of getting products and/or services to the ultimate consumer.

(5)

Recommendation

We earnestly recommend that the N.R.A. eliminate from this proposed code all and every provision which seeks to regulate the manner in which an advertiser shall pay his agent or the amount of payment or rate of payment to be made to his agent.

Agency compensation with respect to both manner of payment and amount of payment is rightfully the primary concern of agent and advertiser. In any given case they - the agent and the advertiser - are the only ones who know the facts as to ability, hours of work involved, and results. Development of methods is in that direction, despite much effort to make the discount system with its rate, said to represent 1918 costs of doing business, the one and only system of agency compensation. Such evolution of methods of agency compensation as is now in evidence, which permits agents and advertisers to arrange compensation to fit a given situation, should be allowed to continue. The Federal Government should not be asked to put a stop to that evolutionary process.

It is our opinion that the position of the A.N.A., as herein expressed, conforms fully to the position of the N.R.A., and that the position of those agents who sponsored the present proposed code does not conform with the position of the N.R.A.

In closing we desire to say that care has been exercised to confine all of the foregoing observations to those considerations which relate directly or indirectly to the business of the national advertiser. If we have erred by crossing the line into the domain of practices which are solely and rightfully the concern of the advertising agent, it has been because an explanation seemed necessary in order to give an adequate description of the business of national advertising in its various aspects, or because the complications of the subject-matter covered caused us to say more than was necessary in order to avoid saying less than was necessary.

Part II

The Legal Status of the Advertising Agent

(A statement made to the Legal Division of the National Recovery Administration on behalf of the Association of National Advertisers by Phillip L. Rivlin of the New York Bar.)

Introduction

The Association of National Advertisers, Inc., a New York membership corporation, consisting of 266 member companies engaged in interstate commerce (which companies utilize advertising), has been requested by the N.R.A. to file a brief in support of the proposition that the advertising agency is the agent of the advertiser.

This memorandum is filed in support of that proposition.

(1)

The Advertising Agent Renders a Personal and Professional Service

The advertising agent (collectively), who has submitted a proposed code to the National Recovery Administration, is a professional man, offering to the advertiser an advertising and marketing service of a personal nature.

As indicative of the type of service he renders, the language of the Court of Appeals in Missouri, in the case of *Kastor vs. Elders*, 156 S. W. 737, is cited. The following is excerpted from that decision:

"The evidence shows that in the growth and development of the advertising business to its present large proportions there has come to be what may be termed a middleman or go-between, known as the advertising agent and agency. This man, or agency, deals with the advertiser on the one hand, advising and assisting him in the selection of the publications to be used, having put in type and preparing advertising matter or copy; making or having made drawings and electrotypes, stereotypes; preparing letters, circulars, pamphlets and literature generally for circulation through the mails, and otherwise; and generally conducting what is termed an advertising campaign, - while on the other hand the agent deals with the publications used, placing all orders for advertisements, and adjusting all charges and settlements with them and paying all amounts due them. In fact, in such cases the publication deals with the agent only. The agent orders the space, the same is charged to him by the publication at the card rate, and he pays therefor, and the advertiser has no dealings with the publication whatever. In such cases, however, the charge to the agent for the space used is lower than the card rate by from 5 to 15 per cent, each publication fixing its own rate or charge. This is what is variously designated in the testimony as the 'agency rate,' the 'lowest rate,' the 'rate with the commission deducted,' etc. It is given uniformly to all agencies or agents who are recognized by the publications as trustworthy and to whom the publishers are willing to extend credit. It is allowed by the publication with the expectation (and is required by some publishers) that the agent or agency retain his or her commissions, the difference between the card rate and the rate charged by the agent. It appears that sometimes the agent gives his advertising patrons the benefit of a part of the agent's commissions, but that is a matter of contract in each instance, and is determined by the nature of the account, the kind and extent of service required of the agent, competition, etc." (Parenthetical matter and underscoring ours.)

In the Federal income tax case of *Fuller & Smith vs. Routzahn*, 23 Fed. (2nd Series) 959, the Federal District Court at Cleveland, stated:

"Clients sought plaintiff's (an advertising agency), services because of that professional standing and reputation, and not

because of the financial rating of plaintiff." (Inserts and underscoring ours.)

In another Federal income tax case, that of H. K. McCann vs. the Commissioner of Internal Revenue (Docket 6578), the Board of Tax Appeals held:

"The evidence establishes that what the advertisers sought was the expert advertising service and marketing counsel of the petitioner's stockholders. The number of clients was so small and the amount expended by each was so large that it was possible to give personal attention to the problems of each advertiser." (Underscoring ours.)

The agencies which were parties to the two last named proceedings were members of the agency association sponsoring the proposed code at issue. Many other citations could be adduced, but such citations would be cumulative rather than distinctive. Exhaustive research covering a number of months has failed to uncover a single case wherein an advertising agency, operating in a manner now customary in that trade, has been considered as a merchandiser or trader in advertising space.

The agency renders a highly individualized service based upon the particular needs of the client served and suited to meet the special requirements. The service is not standardized but is personal, professional and confidential in nature and calls for special skill and training. It would be violative of the ethical concept of the relationship extant between the advertiser and the agency and would constitute a breach of the professional and confidential duty owed the advertiser by the agency for the latter to disclose to a competitor of the advertiser the advertising scheme or plan devised by the agency for such advertiser. There is little doubt but that a threatened disclosure could be enjoined by appropriate legal restraining measures.

(2)

The Service Of The Advertising

Agent Is Rendered To The National Advertiser

Mr. Roy Durstine, formerly President of the American Association of Advertising Agencies, writing in the "Advertising Year Book" of 1924, describes the advertising agent as the "advertiser's partner," in that he offers him the "refreshing viewpoint of the thoughtful, interested outsider, trained in technique and experienced in the fundamentals that underlie business."

"To keep the record clear," says Mr. Durstine, partner in one of the largest of America's advertising agencies, "it may be well to summarize very quickly the six ways in which the agency goes about its business in the United States:

"First, it is the business of an advertising agency to study the product itself

"Second, it is the business of the agency to study the market of the product

"Third, it is the business of the advertising agency to assemble all the facts gathered in these inquiries

"Fourth, it is the agent's business to know how to prepare these (advertising) messages in words and pictures, and how to assemble them through the skillful use of type and the engraver's art.

"Fifth ... to select those (advertising mediums) which reach the greatest number of possible purchasers at the lowest cost to the advertiser.

"Finally, it is the business of the agency to make contracts with sellers of advertising space and materials in behalf of the advertiser, to conduct the intricate purchase of space and materials, to see that the advertising is as ordered and to act as a central disbursing office on paying the advertiser's bills." (Inserts and underscoring ours.)

The above statement will be examined in vain for the discovery of any service, real or implied, which may be rendered to any one other than the advertiser whom the agent serves.

A very realistic concept of advertising agency functions is contained in a letter from F. Wayland Ayer, published in 1921, from which the following is excerpted:

"Some 48 years ago N. W. Ayer & Son reached the conclusion that agency relations were capable of a better interpretation than any then recognized, that we could best serve publishers and ourselves by devoting all our energies to making advertising pay the advertiser rather than in specific endeavor to secure business for any paper or papers; and that thereafter it should be the sole business of this agency to serve its clients. Naturally, the basis of remuneration for this service then became a matter of mutual agreement between our clients and ourselves. None other than we could know the cost of this service. None other than the client could judge its value to him.

"Forty-eight years experience has confirmed to us the value and soundness of this principle. No more now than in 1873 do we concede the right of a publisher to fix the rate of remuneration which our clients shall pay us for our services. That is not the publisher's responsibility." (Underscoring ours.)

Heading one of the largest of the country's advertising agencies at the time the letter was written, its force of logic takes on an added significance. (Parenthetically it should be stated that the agency which argues against the Ayer method of doing business, or the Ayer concept of the agency's function, is arguing against the method which has produced one of the greatest successes in the advertising agency business.)

Mr. Ayer not only serves notice upon publishers (his letter was published in a trade publication whose subscribers were publishers), that he is not their agent; he specifically and categorically proclaims himself to be the servant of the advertiser, and a party adverse to the interests of the publisher.

We have examined many contracts between advertisers and advertising agencies. Those from which excerpts are quoted below are typical of all those examined.

A letter of employment used by Moser and Cotins (an advertising agency), reads as follows:

"Our organization will make a careful study of your (the advertiser's) business and its markets and problems as they relate to selling and advertising.

"As required, we will wholly prepare, or assist you in preparing, complete Sales and Advertising plans, with budgets or cost estimates for the same.

"We will place all orders for advertising space as specified in the approved plans or as you may specifically order us from time to time. We will handle the sending of copy, plates, etc., to the various sellers of space, read and correct proofs, and check the insertions or runs.

"Our organization is continuously at your disposal while we are in your employ" (Parenthetical matter and underscoring ours.)

Is it not of the utmost significance that this form of contract should be generally designated by the agency itself an "agreement of employment"?

In the form of contract used by Messrs. Benton & Bowles, an advertising agency, appear these statements:

"(1) Our advice to you in respect to your various merchandising problems is available to you at any time.

"(2) We shall formulate and from time to time submit to you advertising plans best calculated in our judgment to meet the requirements of your products."

Here again is the professional man speaking; here again he is offering, for a consideration, his professional services to the advertiser.

In the form of contract used by N. W. Ayer & Son, whose former chief executive was quoted, *supra*, appear the following words:

"You (the advertising agency) are to place all our newspaper and periodical advertising, as ordered by us, during one year from the date of your acceptance and thereafter until this agreement is terminated by at least three months written notice by either you or us (the advertiser)."

"You are to secure for us the best terms you can, charging our account just what you credit the parties with whom you deal... etc." (Parenthetical matter and underscoring ours.)

The cases cited from the Courts, reenforced by the typical contract examples just cited, show conclusively that the advertising agent is employed by and serves the interests of his advertiser client. Not one of these contracts specifies a possible, potential, or actual service to the publisher.

(3)

The Agreement Between The Advertiser And

The Agency Creates The Relation Of Principal And Agent

As interpretative of the legal relationship between the advertiser and the advertising agent, the case of *Kaden vs. Moon*, arising in the State of Missouri, 26 S. W. (2nd Series) 812, is in point. The following is taken from the language of the Court in that case:

"We appreciate the fact that there is no particular mode by which an agency may be established; that it is immaterial what terms are used by the parties, or by what name the transaction is designated, if the facts, taken as a whole, fairly disclose that the one party is representing another by the latter's authority, and that the relation of an agency does not depend in every instance upon an express appointment and acceptance, but it is often to be implied from the words and conduct of the parties to the transaction."

"There is no doubt about the fact that the D'Arcy Co. was the agent of the defendant (an advertiser), in having the advertisements prepared and printed, and that the defendant was chargeable with the knowledge of everything printed therein." (Insert and underscoring ours.)

Kaden vs. Moon holds that the relation of principal and agent may be inferred from the nature of the work of the advertising agency.

A contract form employed by the J. Walter Thompson Company, which is representative of contracts in the advertising field may be cited as evidence that the advertiser is the principal and the advertising agency, the agent. The opening sentence of their "agreement of employment" reads as follows:

"We are pleased to submit the terms upon which we act as your advertising agents."

Surely, that is a very definite and unequivocal acknowledgement of the nature of the relationship between the parties to the agreement. This instrument, emanating from an agency, characterizes the agency as the agent of the advertiser. How may the agencies, despite each self-pronouncement, attempt to denominate themselves as agents of the publishers?

In the New York case of *Dorrance Sullivan vs. Bright Star Battery Co.*, 249 N. Y. 593, a contract in the following language was before the Court:

"We desire to do our advertising through you, and this letter is to employ you as our advertising agents and merchandising advisers. We authorize you to plan, prepare and place our advertising in accordance with our approval on the following basis covering the period of your employment under the terms of this letter" (Underscoring ours.)

The Appellate Division of the Supreme Court of the State of New York, in 223 App. Div. 222, by a divided Court held that this contract was void for lack of mutuality and for lack of definiteness, but the Court of Appeals, in a *per curiam* opinion, in which all concurred, reversed the finding of the Appellate Division and held that the agreement was sufficiently definite in its expression to sustain an action brought upon it.

The excerpt from the Thompson letter, *supra*, emanated from the agency and therein the agency acknowledged that it was the agent of the advertiser. In the *Dorrance* case, *supra*, the letter of employment emanated from the advertiser, yet there the court of last resort in the State of New York held the contract a complete one and permitted an action thereon. In both situations the agency was deemed the agent of advertiser. Can there be any doubt that the relationship of principal and agent between the advertiser and the agency is created by such letters of employment?

We have seen no contract covering relations between advertisers and advertising agencies of the type belonging to the American Association of Advertising Agencies, which states or implies a relation other than that of principal and agent between the advertiser and the advertising agency.

(4)

The Advertiser Has Been Held Liable

For The Acts Of His Advertising Agent

In the New York case of *Montague vs. All-Package Grocery Stores*, 182 App. Div. N. Y. 500, the advertising agent was employed to publish the house organ of the All-Package Grocery Company. He was paid for his services and for the cost of producing the house organ. He did not meet the bills for which he had received the moneys of the advertiser. The Court had the following to say, at pages 501, 2, and 3 of the opinion:

"The evidence on which the plaintiff relies shows that the secretary of the defendant (All-Package Grocery Co.) in one affidavit filed, alleged that Hugh McAtamney represented the McAtamney Company 'in connection with that company acting as agent of an advertising campaign which the All-Package Company intended to conduct' arranged for the publication, printing and distribution of this advertising matter."

"The affidavit set forth the arrangement between them, whereby the All-Package Company was to pay the bills rendered to the McAtamney Company, plus a commission of 15 per cent."

"In another affidavit, defendant's secretary refers to McAtamney as an advertising agent and says 'in such capacity he was employed to edit and have printed and published a magazine or paper known as the 'All Package Weekly'"

"It is quite evident that this arrangement did not contemplate that the defendant should become an independent contractor for the publication of the weekly. On the contrary, it is clear that he was to become merely the agent of the plaintiff, incurring bills on the plaintiff's account, and receiving the necessary moneys from the plaintiff to meet them."

"It has also appeared in the course of the testimony that the plaintiff did not know the fact that the agency was the agent of the advertiser, but believed that he was an independent contractor, and had no definite knowledge who that person was for whom the work was being done."

"From the affidavits the jury would have been warranted in drawing the inference that the McAtamney Company was employed by the respondent as its purchasing agent, with authority to pledge its credit for necessary work and supplies; that the agent purchased pursuant to such authority; and that the respondent had the full benefit of the contracts made by its agents. In such case the respondent would be liable to the plaintiff, who dealt in good faith with the agent for an undisclosed principal" (Parenthetical matter and underscoring ours.)

There is a companion case where the above advertiser sued the agent for non-payment of moneys which had been paid to him for the account of the supplier. The agent was held to have converted funds held by him in a fiduciary capacity. All-Package Grocery Stores Co., Inc. vs. Hugh McAtamney, 174 App. Div. 778.

A somewhat similar state of facts existed in the New York case of Clarke vs. Watt, 145 N. Y. S. 145. In that case the agent disappeared, leaving a number of bills unpaid. The agent's name was Kohler; Clarke was the publisher's assignee; and Watt was the advertiser.

The following is taken from the language of the decision:

"The defense is that the contract was made with the H. B. Kohler advertising agency and that the plaintiff extended the credit to the H. B. Kohler advertising agency and not to the defendant; that the defendant had no dealings with the plaintiff." (N.B. The claim asserted in this case had been assigned to Clarke, so that the actual language employed by the court is 'plaintiff's assignor' where we use the word 'plaintiff'.)

"The contract introduced in evidence does not disclose the name of the defendant, but purports to be made between the plaintiff and the H. B. Kohler Advertising Agency, so that it appears upon its face that it is an agency making the contract. The contract bears upon its face indisputable evidence that the advertising contracted for is for the benefit of some other person than the H. B. Kohler agency. This being so, the plaintiff was entitled to assume that there was an undisclosed principal other than the advertising agency.... If the defendant was known to the plaintiff to be the principal in the transaction and the Kohler agency his agent, the defendant alone would be liable to the plaintiff, unless the plaintiff gave credit exclusively to the Kohler agency, in which event, of course, the Kohler agency would be liable." (Insert and underscoring ours.)

Quoting further from the same case, we see the reason for the rule, when it is pursued to its logical conclusion:

"The defendant, having received the full benefit of the advertising, the agent virtually acting for both parties, and the agent having disappeared and become irresponsible, it is difficult to see the justice of the rule which allows the real beneficiary to escape payment, and deprives the plaintiff of the fruits of his labor simply because he gave credit to the agent instead of to the principal. Had the plaintiff not known who the real party in interest was, he might have held him legally liable upon discovering him, notwithstanding he had given credit exclusively to the agent."

Here we see that it is difficult for the advertiser to escape responsibility for the acts of his agent, even though credit for space or other materials be given exclusively to the agent.

We cite, for informative purposes only, and not as precedent authority, the New York case of Daily Attractions vs. Albert Frank (Municipal Court of the City of New York, March 1917), in which the principal became insolvent and the publisher attempted to hold the agent responsible for the cost of the space. The suit failed, the court holding that the agent was not responsible, as it appeared on the face of the contract that the advertising was for the benefit of some party other than the agent, and that therefore the agent could not be held responsible for the failure of the principal to make payment for the space. There was no liability attaching to the agent in any way, in the event of the disappearance of the principal.

Thus the circuit is completed. The agent is responsible to his client, the advertiser; the advertiser in turn is responsible to the publisher for his agent's acts within the apparent scope of the agent's authority.

(5)

It Is The Money Of The Advertiser Which Pays The Agent

One of the methods by which the agent is compensated is set forth in the Kastor case, supra, and while it is an elementary proposition of law that the

question of agency cannot be determined by establishing who pays the agent, but rather that the question is decided by determining where the duty of the agent lies, nevertheless, it is important to point out that the money of the advertiser, in fact, is the money with which the agent is paid.

It is the contract between the advertiser and the agent which creates the agency relation; this contract provides the method by which the agent is to be paid; there is no corresponding contract between the agent and the publisher.

The contract between the advertiser and his agent starts the flow of money into the channel of advertising. The publisher customarily receives only his net rate, i.e., his gross rate less 15 per cent, which, in fact and in law, is his effective rate. The cash discount allowed by the publisher (in addition to the usual agency discount), is computed upon the net rate of the publisher, thus establishing that as a practical matter, in the minds of the publisher, his real rate is his net rate. Any contention by agencies that their discount is paid by the publisher is artificial and fictional.

(6)

There Is No True Analogy Between The Advertising Agent And The Insurance Agent

While it is unusual in a brief to anticipate collateral argument that has not been made (this being the function of the reply brief), the advertising agent, in justification of his untenable position, has for many years attempted to draw an analogy between himself and the insurance agent. There is no true analogy between the two.

There exist, among others, three principal distinctions between the insurance agent and the advertising agent: (1) the insurance agent represents and is paid by the insurer, whereas the advertising agent represents and is paid by the advertiser for services rendered to the latter; (2) the degree of service rendered by the insurance agent is of a standard character to all clients, whereas the degree of service rendered by the advertising agent depends upon the special requirements of each client; and (3) the rate of commission permitted the insurance agent is regulated by law under a state franchise, whereas the rate of discount allowed the advertising agent depends solely upon the individual deal which the agent can make with his client, and no maximum discount is provided.

(1) The insurance agent represents and is paid by the insurance company, a vendor, and the advertising agent represents the advertiser, a purchaser. Section 38 of the New York Insurance Law makes the insurance agent a fiduciary of the insurance company; Section 49 defines an agent and includes an understanding that he primarily represents the insurance company or insurance underwriter.

In New York (where most of the large advertising agencies have offices), the loyalty and duties of the insurance agent are placed in privity with the interest of the insurance company or insurance underwriter. This interest must of necessity be adverse to that of the assured, in the same degree as the interest of the publisher is adverse to that of the advertiser.

The cases cited, supra, disclose the advertising agent to be the agent of the advertiser, and consequently not the agent of the publisher. The advertising agent is a purchasing agent, whereas the insurance agent is a sales agent.

(2) The service of the insurance agent is of the same type to all clients and ceases with the sale of a given policy. His duties are restricted to the sale of the policy. His commission for that sale is regulated by law, and his power to render services to induce the sale likewise is restricted. Further services in respect of the policy - if services are required - are rendered by the insurance company directly and not by the agent. The services which the insurance agent may render are limited to the selection of the type of policy which most accurately fits the needs and desires of the assured.

The advertising agent, on the other hand, renders a purely personal service. The advertising agent buys space as an incident of a general advertising campaign. The services of the advertising agent vary over a wide range. He will aid the advertiser in any part of the sales process. The service is continuous and varies with the needs of the advertiser.

(3) The rate of commission permitted the insurance agent is regulated by law under a state franchise, whereas the rate of discount allowed the advertising agent depends solely upon the terms he can make with his client.

The law regulates the services which the insurance agent may perform, the compensation he may receive, his responsibilities, and the status which he enjoys. The agent of the advertiser is not required by law to have any sort of license to do business; the State has no control over his activities, except under general laws that apply to all business.

The maximum commission of the insurance agent is regulated by statute; the maximum discount of the advertising agent is whatever he can get. While providing a minimum discount in his proposed Code, he has provided no maximum to protect the advertiser against exorbitant demands.

(7)

Conclusion

Analysis of the arguments presented by advertising agents in behalf of the present method of compensating them (their principal concern in the proposed Code), seems to indicate that from their point of view two principal considerations stand forth: First, the agent is entitled to a 15 per cent. discount because of a professional service rendered by him to that ephemeral concept "advertising;" second, the compensation which he receives, by way of a discount, is reasonable, as only a small net return accrues to him after defraying the cost of running his business.

The service which the agent describes as being rendered to "advertising" takes the form of propaganda carried on by him in seeking to develop a wider use of the several mediums of advertising, and in procuring from his advertiser clients a greater dollar volume of advertising appropriations. He renders this service by obtaining new clients for himself, and by getting such clients to spend more money for publicity purposes.

This service, so he argues, is beneficial to space owners and procures for them a larger and more beneficial use of their advertising space. He concludes that, in consideration for this professional service, space owners pay him for his work.

This reasoning, followed to its logical conclusion, might lead one to say that unless space owners maintained advertising mediums, the agent would have no place to exercise his talent, and that therefore, the agent should pay the publisher for maintaining an outlet for his ingenuity. In reality, the service rendered by the agent to the space owner is a natural corollary of his work. In developing more advertising dollars, the agent is serving himself, because his financial return bears a direct relation to the dollar volume of advertising contracts which he places.

It is not the primary function of the advertising agent to develop a greater volume of national advertising. Assuredly, he may with propriety, seek his custom from among a wide variety of manufacturers, but once having procured their custom it is his first duty to serve them faithfully and loyally, as without their patronage, the agent would be in no position to receive compensation, regardless of who pays him.

A few simple observations on the legal duties of an agent will throw the question a little more clearly into perspective. The agent's first duty is that of loyalty to his principal. To cite a common occurrence, let us assume that a controversy has arisen between an advertiser and a publisher, either as to color reproduction, the correct placement of an advertisement, the circulation of the publication or because of some other reason, real or fancied. The agent would be required to choose between the two principals, to represent the one or the other, unless he stood in an independent position between them. Under such circumstances, the invariable practice seems to be that the agent represents, and somewhat vigorously, the viewpoint of the advertiser, for the simple and sound business reason that he wishes his client to remain satisfied with his services, in order that he may not lose his valued patronage, without which he could earn nothing from representing him.

It is likewise a precept of agency that the agency is not to act in opposition to the interests of his principal. The agent cannot lawfully serve any private interest of his own, in opposition to the interests of his employer. This, say the Courts, is a rule of common honesty as well as of law.

The rule which prevents the agent from acting for himself in a matter where his interest would conflict with his duty to his client also prevents him from acting for another whose interest is adverse to that of his client. Unless the principal contracts for less, the agent is bound to serve him with all his skill, judgment and discretion.

Again, in the matter of compensation, the law finds opportunity to express its policy. If it appears that the agent has attempted to act in behalf of two or more persons having diverse interests, he will be denied a recovery of compensation from either or any.

These general considerations seem to point to the agent as the representative of the advertiser. The agent owes him his loyalty. The advertiser is the only principal who is definite and ascertainable in a given circumstance. The agent, in theory at least, does not act in opposition to his interests. It is certain that it would be a breach of professional confidence if the agent attempted to represent another whose interest was adverse to that of his client.

In specific application, the general principles set forth above have been endorsed in those few cases where the Courts have been called upon to define the legal relationship between an advertising agent and his client, the advertiser. In each such case, the advertiser has been held to be the principal and the advertising agent the agent.

It would appear that the advertising agent, acting in accordance with the prevailing practices in that business, is the agent of the advertiser and owes him undivided loyalty.

ADVERTISING AGENTS SHOULD NOT BE PERMITTED TO DRAFT A CODE BASED ON THE THEORY THAT THEY ARE AGENTS OF THE PUBLISHER.

PART IV

APPENDIX

Chapter XV

COPY OF QUESTIONNAIRE SENT TO ADVERTISERS

FROM: ASSOCIATION OF NATIONAL ADVERTISERS

TRUSTEES OF AGENCY
COMPENSATION STUDY
Allyn B. McIntire
Pepperell Mfg. Co.
Stuart Penhody
The Burden Co.
Lee H. Bristol
Bristol-Myers Co.
DIRECTOR OF STUDY
Albert E. Hance

CHECKING LIST

For an Inventory of Methods of
Advertising Agency Compensation by

ASSOCIATION OF NATIONAL ADVERTISERS, INC.
330 West 42nd Street, New York, N. Y.

RETURN TO
Trustees of
Agency Compensation Study
Association of National
Advertisers
330 West 42nd Street,
New York, N. Y.
A summarized report of
information obtained by this
checking list will be mailed
to you if you return sepa-
rately the enclosed govern-
ment post card, which card is
in no way keyed.

EXPLANATION: The questions that follow represent an endeavor to obtain a true inventory of advertiser-agency relations as they exist today with respect to compensation. They are concerned only with advertising done in the United States.

The majority of the questions can be answered with a simple check mark. Only a few minutes of your time should be required. Your cooperation will be greatly appreciated.

A summarized report of all answers to this checking list will be sent to you if you return separately the enclosed government post card.

INSTRUCTIONS: Use a separate Checking List for each product or service advertised. Exceptions to this rule would be: (1) Mail order houses and chain stores. Only one Checking List should be used for entire line of products when only one agency is employed and two or more Checking Lists when two or more agencies are employed; (2) A family of products falling into the same classification. If all members of that family of products are advertised through the same agency under the same plan of agency compensation for all, use only one Checking List. If two or more agencies are employed, use two or more Checking Lists. Additional copies of Checking Lists will gladly be sent on request.

My type of product, family of products or service covered in this Checking List is: (Please write in classification, such as food, drugs, etc.)

DEFINITION OF TERMS—PLEASE READ CAREFULLY
This Checking List separates advertising mediums into two general classifications: (1) discount mediums and (2) non-discount mediums. An explanation of these and other terms follows:

***DISCOUNT MEDIUMS:** Mediums that generally grant discounts (sometimes called "commissions" or "differentials" but referred to here as "discounts") to advertising agents or others. They include newspapers, radio and outdoor at national rates; magazines; farm papers, etc.

NON-DISCOUNT MEDIUMS: Mediums that generally do not grant discounts ("commissions" or "differentials"). Such mediums generally have one rate available to each and every user. They include newspapers, radio and outdoor at local rates; direct mail; car cards, etc.

(All classifications of mediums cannot be divided strictly into discount and non-discount mediums. For example, some business papers grant discounts.

*NOTE: Discount is also called "Commission" by some and "Differential" by others.

and others do not. Provision is made for such situations in this checking list.)

GROSS RATE: This is the rate published by discount advertising mediums on rate cards and in directories. It is often spoken of as the "card rate." It is available to any one.

***DISCOUNT:** A percentage of the gross rate—often called a "commission" by some and a "differential" by others. Allowed only to advertising agents by some mediums and allowed to both agents and advertisers by others.

NET RATE: This rate is the gross rate less the discount defined above.

CASH DISCOUNT: A deduction—usually 2 per cent—allowed by some mediums when payment is made within a specified time. In discount mediums it is usually deducted from the net rate.

QUESTIONS TO BE ANSWERED:

I. Did you place any of your advertising through an advertising agency in 1933? (Please check)
(If you used no agency in 1933, please fill out answers to questions VI, VIII, IX, X, XIV, XV, XVI, XVII, XVIII, XX and XXI.)

II. (A) Who chose the mediums in which your advertising appeared?
Mediums selected by agency Mediums selected by advertiser Jointly by advertiser and agent

(B) Do you require your agent to receive your approval before making any commitments for space, art work, engravings, typography, and other accessories in your name?

(C) Do you require the agency to submit all advertising copy to you for your approval before final instructions are issued to the publisher from whom the space is purchased?

III. Does your agency pass on to you the cash discounts, when earned, as allowed by publishers or other mediums?

IV. (A) To your knowledge, does your agency ever pay the publisher (or other medium) for any of your advertising before receiving the money from you?

(B) If so, do you make extra payment to agency for this service of advancing money on your behalf?

V. In the tables that follow, please check opposite each medium or service the method under which your agency received compensation for services rendered you in 1933. (Please read each method carefully before checking your answers.)

Table A DISCOUNT MEDIUMS (Mediums that generally grant discounts or "commissions")	METHOD 1 Discount allowed by medium—no more—no less (No minimum guarantee by advertiser)	METHOD 2 Minimum guarantee by advertiser with all dis- counts above that retained by agent	METHOD 3 All discounts from mediums plus fee from advertiser over and above dis- counts	METHOD 4 *Percentage on net rate of medium (fixed by agent or advertiser) (see foot- note)	METHOD 5 *Percentage on Gross Rate of medium (fixed by agent or advertiser) (see foot- note)	METHOD 6 Fee or lump sum paid by advertiser (without respect to cost of medium)	METHOD 7 Speculative basis (on return from advertising)	OTHER METHOD (Please explain— attach your own speculative memo- randum, if necessary)
Magazines				What %	What %			
Newspapers at national rates				What %	What %			
Radio time at national rates				What %	What %			
Outdoor at national rates				What %	What %			
Farm papers				What %	What %			
Trade or Merchan- dising Pub's.†				What %	What %			
Industrial and Technical Pub's.†				What %	What %			
Professional Pub's.†				What %	What %			
Other (Please specify)				What %	What %			

*NOTE on Methods 4 and 5: This percentage is set without regard to printed discount of advertising medium. Under this arrangement discounts allowed by medium are debited or credited to advertiser or agent as the case may be.

†Trade or merchandising: Publications sent to dealers and distributors. Industrial and Technical: Publications used for products sold to industry. Professional: Publications sent to architects, doctors, etc.

Table B NON-DISCOUNT MEDIUMS (Mediums that generally do not grant discounts or "commissions")	METHOD 1 Percentage on cost of medium (determined by agent or advertiser)	METHOD 2 Fee basis (having no relation to cost of medium)	METHOD 3 *No charge for agency service (See footnote)	METHOD 4 Speculative basis (on return from advertising)	OTHER METHOD (Please explain)
Car cards					
Direct mail					
Newspapers at local rates					
Radio time at local rates					
Outdoor at local rates					
Trade or merchan- dising pub's.†					
Industrial and technical pub's.†					
Professional pub's.†					
Other (Please specify)					

*NOTE on Method 3: This classification is predicated on the fact that some agents confine their income solely to discounts from discount mediums—service on non-discount mediums they claim is paid for out of income from discount mediums.

†Trade or merchandising: Publications sent to dealers and distributors. Industrial and Technical: Publications used for products sold to industry. Professional: Publications sent to architects, doctors, etc.

Table C MATERIALS (Purchased by Agency)	METHOD 1 Fixed percentage on gross cost	METHOD 2 *Fixed percentage on net cost (see footnote)	METHOD 3 Variable per- centage on gross depend- ing upon volume of advertising in discount mediums	METHOD 4 Variable per- centage on net depending upon volume of advertising in discount mediums	METHOD 5 Fee basis (having no relation to amount or quantity)	METHOD 6 No agency service charge what- soever (mate- rials billed at cost to advertiser)	METHOD 7 No agency service charge for materials	OTHER METHOD (Please explain)
Engravings, electron, etc.								
Typography								
Mats								
Art work, photo- graphs, etc.								
Printing (other than direct mail)								
Other (Please specify)								

*NOTE on Method 3: On certain materials there are two sets of discounts: (a) a trade discount—which discount is allowed to advertisers as well as agents—and (b) a cash discount (net, therefore, means the gross price less trade discount—less cash discount).

Table D SPECIAL SERVICES (Rendered by Agency)	METHOD 1 At cost to Agency	METHOD 2 Cost plus fixed percentage	METHOD 3 *Billed to Advertiser at a price higher than agent's contract price —difference, being agent's profit	METHOD 4 *A percentage on total of cost to agent and agent's gross profit	METHOD 5 Fee basis	METHOD 6 No charge	OTHER METHOD (Please explain)
Consumer investi- gations							
Dealer investi- gations							
Other research work							
Publicity service							
Radio talent							
Training and super- vising salesmen							
Sales and service lit- erature for sales- men and dealers							
Other (Please specify)							

*Explanation of Methods 3 and 4: An advertising agent may contract direct with radio talent, for example, at a given price and then resell that talent to advertisers at a price higher than that called for in his contract with the talent. He can take his compensation only from the profit arising from resale of talent. (If this is so in your case, check Method 3.) Or he can add his profit to his original cost and bill the advertiser for talent at that total cost plus a percentage on that total (operations of this kind should be checked under Method 4).

- VI. (A) Did you place any advertising direct (not through an agency) in any discount mediums in 1933? Yes ☐ No ☐
- (B) If so, please check those in which you paid (1) gross rates for all space or time purchased, (2) those in which you paid all net rates, and (3) those in which you paid gross rates in some and net rates in others. (For definitions of gross and net rates, see page one.) (Give your answer with check marks in the proper columns.)

MEDIUM	Paid gross rates for all space or time purchased	Paid net rates for all space or time purchased	Paid gross rates in some and net rates in others
Magazines			
Newspapers (at national rates)			
Radio time (at national rates)			
Outdoor (at national rates)			
Farm papers			
Trade or Merchandising Pub's.			
Industrial and Technical Pub's.			
Professional Pub's.			
Other (Please specify)			

- VII. Approximately what percentage of your total 1933 appropriation for any and all advertising passed through your agency's hands and what percentage did you spend direct? ("Appropriation" includes all items listed in Tables A, B, C, and D of Question V.)
- | | |
|---------------------------------|------|
| Percentage spent through agency | % |
| Percentage spent direct | % |
| | 100% |

- VIII. (A) How many years have you advertised the product or service covered in this Checking List? Number of years _____
- (B) How many times have you changed agencies during that period? Number of times _____
- (C) How long have you had your present agency? Number of years _____
- (D) If you have changed agencies, can you give any definite reasons for any or all of your changes? If so, please state: _____
- IX. Are you of the opinion that the number of salesmen of advertising mediums such as newspapers, magazines, business papers, outdoor plants, radio stations, etc., calling on you has been increasing or decreasing during the past five years?
- | | | |
|------------|------------|-----------|
| Increasing | Decreasing | No change |
|------------|------------|-----------|
- X. (A) Has the number of solicitations from advertising agencies to handle your account been increasing or decreasing during the past five years? Increasing ☐ Decreasing ☐ No change ☐
- (B) Has the number of agency solicitations based on speculative preparation of advertising copy and campaigns been increasing or decreasing? ("Speculative copy" means advertising that the advertising agent has prepared on his own initiative and at his own expense in order to sell his services.)
- | | | |
|------------|------------|-----------|
| Increasing | Decreasing | No change |
|------------|------------|-----------|

- XI. (A) Do you own the agency handling your account? Yes—in whole Yes—in part No
 (B) If so, indicate how ownership is held. In company's own name In name of holding company
 In name of individual officers or employees as stockholders
- XII. Is your company owned by an advertising agency? Yes—in whole Yes—in part No
- XIII. Is salary of any person or persons in your organization paid by agency?
 Yes—in whole Yes—in part No If so, how many? Number of persons
- XIV. Please check the method which you used to compensate organizations OTHER than your advertising agency for services rendered you in your 1933 sales and/or advertising program? DO NOT GIVE FIGURES.

PROFESSIONAL SPECIALISTS OTHER THAN ADVERTISING AGENTS	Fee basis (having no relation to quantity or amount)	Fixed percentage of amount spent	Speculative basis—(on returns from advertising or service rendered)	OTHER METHOD (Please explain)
Direct Mail Specialists (not re- ceiving income from printers)				
Sales or Advertising Consultants				
Research Organizations				
Free Lance Copy Writers				
Free Lance Artists				
Public Relations Counsel				
Management Engineers				
Creators of Window and Counter Displays				
Display Installation Services				
Exhibition Specialists				
Motion Picture Producers				
Package Specialists				
Sampling Specialists				
Radio Program Bureaus				
Electrical Transcription Producers				
Premium Goods Specialists				
Other (Please specify)				

- XV. In what classification would your company fall according to your total advertising expenditures for 1933 on product or service covered in this checking list? Please check. (Total should include only those items listed in Tables A, B, C, and D of question V.)

Less than \$50,000	From \$250,000 to \$500,000	From \$3,000,000 to \$5,000,000
From \$50,000 to \$100,000	From \$500,000 to \$1,000,000	Over \$5,000,000
From \$100,000 to \$250,000	From \$1,000,000 to \$3,000,000	

- XVI. What is your attitude toward the discount ("commission") system of agency compensation?
 Favorable Unfavorable
- XVII. Do you believe there are legal or moral restrictions which require you to compensate your agency by a discount or "commission" arrangement? Legal Yes No Moral Yes No
- XVIII. What method of agency compensation would you prefer if you believed you were able to make an unhampered choice?

- XIX. (A) If all advertising mediums were available at one and the same price to all advertisers and all agents, would you continue to use an advertising agency because of its specialized ability at a price mutually agreeable?
 Yes No

- (B) As much as at present? Less than now? More than now?

- XX. Please make any comments you care to on the subject of advertising agency compensation:

- XXI. Did you start to advertise the product or service covered in this Checking List on your own initiative or were you induced to do so by some outside individual or organization? On own initiative By an advertising agent By a salesman of an advertising medium Other (Please specify)
- (If you desire to send a brief outline covering the history of your start in advertising, it would be received with real appreciation.)

Your signature is optional. If given it will be kept in confidence. Do not sign unless you desire to.

Individual and Title

Company and Address

Chapter XVI

STATISTICAL TABLES COMPILED FROM QUESTIONNAIRE REFERRED TO BUT NOT REPRODUCED IN CHAPTER VI OF PART I

Table XVII

THE USE OF DISCOUNT AND NON-DISCOUNT MEDIUMS BY DIRECT ADVERTISERS

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>USED DISCOUNT MEDIUMS</u>								
Number	40	10	2	1	0	2	2	57
Percent	58.0	77.0	20.0	50.0	---	100	66.7	60.7
<u>USED NON-DISCOUNT MEDIUMS</u>								
Number	25	3	3	1	0	0	1	33
Percent	36.2	23.0	60.0	50.0	---	---	33.3	35.1
<u>DIDN'T ANSWER</u>								
Number	4	0	0	0	0	0	0	4
Percent	5.8	---	---	---	---	---	---	4.2
<u>NUMBER ANSWERING</u>	69 (100%)	13 (100%)	5 (100%)	2 (100%)	0 (100%)	2 (100%)	3 (100%)	94 (100%)

The information in this table was obtained from answers to Questions I and VI (a). Advertisers who checked "No" to Question I and "No" to Question VI (a) were assumed to have used non-discount mediums. Those who left VI (a) blank were designated as not having answered.

Table XVIII

ADVERTISERS USING AN ADVERTISING AGENCY IN 1933

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>YES</u>								
Number	420	150	114	67	26	31	22	830
Percent	85.9	92.0	95.8	97.0	100	94.0	88.0	89.8
<u>NO</u>								
Number	69	13	5	2	0	2	3	94
Percent	14.1	8.0	4.2	3.0	---	6.0	12.0	10.2
<u>NUMBER ANSWERING</u>	489 (100%)	163 (100%)	119 (100%)	69 (100%)	26 (100%)	33 (100%)	25 (100%)	924 (100%)

The information given in this compilation was obtained from answers to Question I.

Table XIX

RESPONSIBILITY FOR INCURRING SPACE AND ART MECHANICAL CHARGES

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>YES</u>								
Number	397	143	104	66	22	27	21	780
Percent	96.9	96.0	91.2	98.5	84.6	96.5	95.5	95.2
<u>NO</u>								
Number	12	5	5	1	1	0	1	25
Percent	2.9	3.3	4.4	1.5	3.9	---	4.5	3.0
<u>SPACE ONLY</u>								
Number	5	1	5	0	3	1	0	15
Percent	1.2	0.7	4.4	---	11.5	3.5	---	1.8
<u>NUMBER ANSWERING</u>	414 (100%)	149 (100%)	114 (100%)	67 (100%)	26 (100%)	28 (100%)	22 (100%)	820 (100%)

This compilation shows the answers to Question II (b).

Table XX

RESPONSIBILITY FOR APPROVAL OF COPY

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undesignated	Total
<u>YES</u>								
Number	405	147	110	58	26	30	20	796
Percent	96.7	99.3	96.5	96.7	100	96.8	91.0	97.1
<u>NO</u>								
Number	13	1	1	2	0	0	1	18
Percent	3.1	0.7	0.9	3.3	---	---	4.5	2.2
<u>ADVERTISERS WHO WROTE OWN COPY</u>								
Number	1	0	3	0	0	1	1	6
Percent	0.2	---	2.6	---	---	3.2	4.5	0.7
<u>NUMBER ANSWERING</u>	419 (100%)	148 (100%)	114 (100%)	60 (100%)	26 (100%)	31 (100%)	22 (100%)	820 (100%)

The information given here is taken from answers to Question II (c).

Table XXI (a)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS

Magazines

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undesignated	Total
<u>DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS</u>								
Number	210	86	71	48	19	26	10	470
Percent	75.1	73.0	77.2	82.8	82.7	96.3	77.0	77.1
<u>MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT</u>								
Number	15	5	5	0	0	0	0	27
Percent	5.4	5.9	5.4	---	---	---	---	4.4
<u>ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS</u>								
Number	22	4	5	0	0	0	0	31
Percent	7.8	3.4	5.4	---	---	---	---	5.1
<u>PERCENTAGE ON NET RATE (fixed by agent or advertiser)</u>								
Number	14	9	8	8	3	1	1	44
Percent	6.4	7.6	8.7	13.8	13.0	3.7	7.7	7.2
<u>PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)</u>								
Number	4	2	1	0	0	0	2	9
Percent	1.4	1.7	1.1	---	---	---	15.3	1.5
<u>FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)</u>								
Number	13	9	2	2	1	0	0	27
Percent	4.6	7.6	2.2	3.4	4.3	---	---	4.4
<u>SPECULATIVE BASIS (on returns from advertising)</u>								
Number	1	1	0	0	0	0	0	2
Percent	0.3	0.8	---	---	---	---	---	0.3
<u>OTHER METHOD</u>								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
<u>NUMBER ANSWERING</u>	279 (100%)	118 (100%)	92 (100%)	58 (100%)	23 (100%)	27 (100%)	13 (100%)	610 (100%)

Tables XXI (a) to XXI (h) show the answers to Division A of Question V. Only 15 advertisers used publications other than those listed in these Tables. Because of the smallness of the number the answers of those advertisers who checked "other" publications are not tabulated here. Even fewer advertisers checked "other" publications, materials and services in answering Divisions B, C and D of Question V and therefore those answers are not tabulated.

Table XXI (b)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS
Newspapers at National Rates

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	132	71	52	144	19	27	77.8	353
Percent	81.2	80.7	78.9	80.0	82.8	96.5		81.5
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	3	2	3	0	0	0	0	8
Percent	1.8	2.3	4.5	---	---	---	---	1.8
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	10	2	1	0	0	0	1	14
Percent	6.1	2.3	1.5	---	---	---	11.1	3.2
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	10	6	9.1	8	2	1	1	34
Percent	6.1	6.8	9.1	14.5	8.7	3.5	11.1	7.9
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	18	3.4	2	1	0	0	0	9
Percent	1.8	3.4	3.0	1.8	---	---	---	2.1
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	5	4	2	2	2	0	0	15
Percent	3.0	4.5	3.0	3.7	8.7	---	---	3.5
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	164	88	66	55	23	28	9	433
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181.

Table XXI (c)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS
Radio Time at National Rates

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	48	39	34	25	16	20	5	187
Percent	81.3	89.0	81.0	80.7	84.2	91.0	100	83.2
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	1	1	1	0	0	1	0	4
Percent	1.7	2.1	2.3	---	---	4.5	---	1.8
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	2	2	1	0	0	0	0	5
Percent	3.4	4.3	2.3	---	---	---	---	2.2
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	3	2	2	4	2	1	0	14
Percent	5.1	4.3	4.8	12.9	10.5	4.5	---	6.2
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	1	1	1	1	1	0	0	6
Percent	1.7	2.1	4.8	3.2	5.3	---	---	2.7
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	3	1	2	1	0	0	0	7
Percent	5.1	2.1	4.8	3.2	---	---	---	3.1
SPECULATIVE BASIS (on returns from advertising)								
Number	0	1	0	0	0	0	0	1
Percent	---	2.1	---	---	---	---	---	0.4
OTHER METHOD								
Number	1	0	0	0	0	0	0	1
Percent	1.7	---	---	---	---	---	---	0.4
NUMBER ANSWERING	59	47	42	31	19	22	5	225
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181.

Table XXI (d)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS

Outdoor at National Rates

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	17	15	18	21	11	17	2	101
Percent	80.9	60.0	75.0	80.8	91.7	89.5	100	78.3
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	0	1	2	0	0	0	0	3
Percent	---	4.0	8.3	---	---	---	---	2.3
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	4	1	1	0	0	0	0	3
Percent	4.8	4.0	4.2	---	---	---	---	2.3
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	4	4	0	5	1	0	0	11
Percent	4.8	16.0	---	19.2	8.3	---	---	8.5
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	0	2	2	0	0	2	0	6
Percent	---	8.0	8.3	---	---	10.5	---	4.7
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	2	2	1	0	0	0	0	5
Percent	9.5	8.0	4.2	---	---	---	---	3.5
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	21	25	24	26	12	19	2	129
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181.

Table XXI (e)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS

Farm Papers

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	70	25	28	17	6	14	7	167
Percent	82.3	75.8	73.7	74.0	66.7	87.5	87.5	78.7
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	1	1	2	0	0	0	0	4
Percent	1.2	3.0	5.3	---	---	---	---	1.9
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	4	0	1	0	0	0	0	5
Percent	4.7	---	2.6	---	---	---	---	2.4
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	6	3	1	4	2	0	1	17
Percent	7.1	9.0	2.6	17.4	22.2	---	12.5	8.0
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	1	2	4	1	1	2	0	11
Percent	1.2	6.1	10.5	4.3	11.1	12.5	---	5.2
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	3	2	2	1	0	0	0	8
Percent	3.5	6.1	5.3	4.3	---	---	---	3.8
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	85	33	38	23	9	16	8	212
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181.

Table XXI (f)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS
Trade or Merchandising Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	125	54	48	28	12	14	6	287
Percent	65.1	61.5	65.7	60.9	80.0	77.9	66.7	65.1
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	13	7	3	1	0	0	0	24
Percent	6.8	7.9	4.1	2.2	---	---	---	5.5
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	15	7	4	0	0	0	1	27
Percent	7.8	7.9	5.5	---	---	---	11.1	6.1
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	15	11	11	14	1	1	1	54
Percent	7.8	12.5	15.1	30.4	6.6	5.5	11.1	12.2
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	9	2	5	2	1	3	1	23
Percent	4.7	2.5	6.9	4.3	6.7	16.6	11.1	5.2
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	15	7	2	1	1	0	0	26
Percent	7.8	7.9	2.7	2.2	6.7	---	---	5.9
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	192	88	73	46	15	18	9	441
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181..

Table XXI (g)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS
Industrial and Technical Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	66	23	21	14	4	8	3	139
Percent	61.7	59.0	60.0	63.7	57.1	66.7	60.0	61.3
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	8	4	3	0	0	1	0	16
Percent	7.5	10.2	8.6	---	---	8.3	---	7.0
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	9	1	0	0	0	0	0	10
Percent	8.4	2.6	---	---	---	---	---	4.4
PERCENTAGE ON NET RATES (fixed by agent or advertiser)								
Number	9	7	5	6	1	3	1	28
Percent	8.4	7.8	14.2	27.3	14.3	25.0	20.0	12.3
PERCENTAGE ON GROSS RATES OF MEDIUM (fixed by agent or advertiser)								
Number	11	4	2	1	1	0	1	21
Percent	10.3	10.2	8.6	4.5	14.3	---	20.0	9.3
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	4	4	3	1	1	0	0	13
Percent	3.7	10.2	8.6	4.5	14.3	---	---	5.7
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	107	39	35	22	7	12	5	227
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXI (a), page 181.

Table XXI (h)

METHODS OF AGENCY COMPENSATION FOR DISCOUNT MEDIUMS
Professional Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
DISCOUNT ALLOWED BY MEDIUM - NO MORE - NO LESS								
Number	27	17	15	10	6	7	2	84
Percent	64.3	65.4	55.8	62.5	66.7	70.7	50.0	62.7
MINIMUM GUARANTEE BY ADVERTISER WITH ALL DISCOUNTS ABOVE THAT RETAINED BY AGENT								
Number	2	2	3	0	0	0	0	7
Percent	4.8	7.7	17.1	---	---	---	---	5.2
ALL DISCOUNTS FROM MEDIUMS PLUS FEE FROM ADVERTISER OVER AND ABOVE DISCOUNTS								
Number	4	2	1	0	0	0	0	7
Percent	9.5	7.7	3.7	---	---	---	---	5.2
PERCENTAGE ON NET RATE (fixed by agent or advertiser)								
Number	4	2	6	6	1	3	1	23
Percent	9.5	7.7	22.2	37.5	11.1	30.0	25.0	17.2
PERCENTAGE ON GROSS RATE OF MEDIUM (fixed by agent or advertiser)								
Number	7	1	2	0	1	0	1	8
Percent	17.1	3.8	7.4	---	11.1	---	25.0	6.0
FEE OR LUMP SUM PAID BY ADVERTISER (without respect to cost of medium)								
Number	2	7	0	0	1	0	0	5
Percent	4.8	17.7	---	---	11.1	---	---	3.7
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER METHOD								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	12 (100%)	26 (100%)	27 (100%)	16 (100%)	9 (100%)	10 (100%)	4 (100%)	134 (100%)

See note on Table XXI (a), page 181.

Table XXII (a)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS
Car Cards

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number	5	7	4	3	3	1	1	24
Percent	25.0	41.2	50.0	30.0	100	12.5	33.3	34.8
FEE BASIS (having no relation to cost of medium)								
Number	11	4	3	1	0	0	1	20
Percent	55.0	23.6	37.5	10.0	---	---	33.4	28.9
NO CHARGE FOR AGENCY SERVICE								
Number	4	6	1	6	0	7	1	25
Percent	20.0	35.2	12.5	60.0	---	87.5	33.3	36.3
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
NUMBER ANSWERING	20 (100%)	17 (100%)	8 (100%)	10 (100%)	3 (100%)	8 (100%)	3 (100%)	69 (100%)

Tables XXII (a) to XXII (h) are tabulations of the answers to Division B of Question V.

Table XXII (b)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

Direct Mail

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number	51	23	15	6	3	2	2	102
Percent	35.4	40.3	46.8	33.3	75.0	22.2	28.6	37.7
FEE BASIS (having no relation to cost of medium)								
Number	71	22	8	4	0	1	3	109
Percent	49.3	38.6	25.0	22.2	---	11.1	42.8	40.2
NO CHARGE FOR AGENCY SERVICE								
Number	21	10	9	8	1	6	2	57
Percent	14.6	17.6	28.2	44.5	25.0	66.7	28.6	21.0
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER								
Number	1	2	0	0	0	0	0	3
Percent	0.7	3.5	---	---	---	---	---	1.1
NUMBER ANSWERING	144 (100%)	57 (100%)	32 (100%)	18 (100%)	4 (100%)	9 (100%)	7 (100%)	271 (100%)

See note on Table XXII (a), page 189.

Table XXII (c)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

Newspapers at Local Rates

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number	16	20	11	8	6	5	2	68
Percent	41.1	54.1	55.0	66.6	100	62.5	50.0	53.9
FEE BASIS (having no relation to cost of medium)								
Number	13	12	4	2	0	0	2	33
Percent	33.3	32.4	20.0	16.7	---	---	50.0	26.2
NO CHARGE FOR AGENCY SERVICE								
Number	10	3	5	2	0	3	0	23
Percent	25.6	8.1	25.0	16.7	---	37.5	---	18.3
SPECULATIVE BASIS (on returns from advertising)								
Number	0	0	0	0	0	0	0	0
Percent	---	---	---	---	---	---	---	---
OTHER								
Number	0	2	0	0	0	0	0	2
Percent	---	5.4	---	---	---	---	---	1.6
NUMBER ANSWERING	39 (100%)	37 (100%)	20 (100%)	12 (100%)	6 (100%)	8 (100%)	4 (100%)	126 (100%)

See note on Table XXII (a), page 189.

Table XXII (d)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

Radio Time at Local Rates											
	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total			
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser.)											
Number Percent	8 38.1	14 70.0	9 56.3	4 57.2	5 100	4 80.0	1 100	45 60.0			
FEE BASIS (having no relation to cost of medium)											
Number Percent	9 42.9	5 25.0	3 18.7	2 28.5	0 ---	0 ---	0 ---	19 25.3			
NO CHARGE FOR AGENCY SERVICE											
Number Percent	4 19.0	1 5.0	4 25.0	1 14.3	0 ---	1 20.0	0 ---	11 14.7			
SPECULATIVE BASIS (on returns from advertising)											
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---			
OTHER											
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---			
NUMBER ANSWERING											
	21 (100%)	20 (100%)	16 (100%)	7 (100%)	5 (100%)	5 (100%)	1 (100%)	75 (100%)			

See note on Table XXII (a), page 189.

Table XXII (e)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

Outdoor at Local Rates											
	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undesignated	Total			
<u>PERCENTAGE ON COST OF MEDIUM</u> (determined by agent or advertiser)											
Number	5	5	5	1	3	4	1	24			
Percent	50.0	41.7	62.5	33.3	100	100	100	58.5			
<u>FEE BASIS</u> (having no relation to cost of medium)											
Number	3	5	1	1	0	0	0	10			
Percent	30.0	41.7	12.5	33.4	---	---	---	24.4			
<u>NO CHARGE FOR AGENCY SERVICE</u>											
Number	2	2	2	1	0	0	0	7			
Percent	20.0	16.6	25.0	33.3	---	---	---	17.1			
<u>SPECULATIVE BASIS</u> (on returns from advertising)											
Number	0	0	0	0	0	0	0	0			
Percent	---	---	---	---	---	---	---	---			
<u>OTHER</u>											
Number	0	0	0	0	0	0	0	0			
Percent	---	---	---	---	---	---	---	---			
<u>NUMBER ANSWERING</u>											
	10 (100%)	12 (100%)	8 (100%)	3 (100%)	3 (100%)	4 (100%)	1 (100%)	41 (100%)			

See note on Table XXII (a), page 189.

Table XXII (f)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS
Trade or Merchandising Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number Percent	72 61.5	31 60.7	35 81.4	12 66.6	6 85.7	9 100	4 50.0	169 66.8
FEE BASIS (having no relation to cost of medium)								
Number Percent	32 27.4	12 23.6	1 2.3	3 16.7	0 ---	0 ---	1 12.5	49 19.4
NO CHARGE FOR AGENCY SERVICE								
Number Percent	13 11.1	7 13.7	7 16.3	3 16.7	1 14.3	0 ---	3 37.5	34 13.4
SPECULATIVE BASIS (on returns from advertising)								
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
OTHER								
Number Percent	0 ---	1 2.0	0 ---	0 ---	0 ---	0 ---	0 ---	1 0.4
NUMBER ANSWERING	117 (100%)	51 (100%)	43 (100%)	18 (100%)	7 (100%)	9 (100%)	8 (100%)	253 (100%)

See note on Table XXII (a), page 189.

Table XXII (g)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS
Industrial and Technical Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number Percent	44 69.9	24 68.6	19 79.2	7 58.3	4 80.0	9 90.0	3 100	110 72.4
FEE BASIS (having no relation to cost of medium)								
Number Percent	13 20.6	8 22.8	1 4.2	1 8.3	0 ---	1 10.0	0 ---	24 15.8
NO CHARGE FOR AGENCY SERVICE								
Number Percent	6 9.5	3 8.6	4 16.6	4 33.4	1 20.0	0 ---	0 ---	18 11.8
SPECULATIVE BASIS (on returns from advertising)								
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
OTHER								
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
NUMBER ANSWERING	63 (100%)	35 (100%)	24 (100%)	12 (100%)	5 (100%)	10 (100%)	3 (100%)	152 (100%)

See note on Table XXII (a), page 189.

Table XXII (h)

METHODS OF AGENCY COMPENSATION FOR NON-DISCOUNT MEDIUMS

Professional Publications

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undes- ignated	Total
PERCENTAGE ON COST OF MEDIUM (determined by agent or advertiser)								
Number Percent	12 50.0	13 61.9	12 75.0	5 62.5	3 75.0	6 100	2 100	53 65.2
FEE BASIS (having no relation to cost of medium)								
Number Percent	7 29.1	5 23.8	0 ---	1 12.5	0 ---	0 ---	0 ---	13 16.1
NO CHARGE FOR AGENCY SERVICE								
Number Percent	4 16.7	3 14.3	4 25.0	2 20.0	1 25.0	0 ---	0 ---	14 17.5
SPECULATIVE BASIS (on returns from advertising)								
Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
OTHER								
Number Percent	1 4.2	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	1 1.2
NUMBER ANSWERING	21 (100%)	21 (100%)	16 (100%)	8 (100%)	4 (100%)	6 (100%)	2 (100%)	81 (100%)

See note on Table XXII (a), page 189.

Table XXIII

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY

	Engravings, Electros, etc.	Typography	Mats	Art Work, Photographs, etc.	Printing (other than direct mail)	Other
FIXED PERCENTAGE ON GROSS COST						
Number Percent	246 33.6	212 33.1	171 32.0	233 35.8	145 32.8	6 42.8
FIXED PERCENTAGE ON NET COST						
Number Percent	269 36.8	239 37.3	202 37.8	244 35.2	151 34.0	5 35.7
VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS						
Number Percent	2 0.3	2 0.3	2 0.4	2 0.3	2 0.5	0 ---
VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS						
Number Percent	2 0.3	2 0.3	2 0.4	2 0.4	2 0.5	0 ---
FEE BASIS (having no relation to amount or quantity)						
Number Percent	42 5.7	39 6.1	30 5.6	54 7.8	42 9.5	2 14.3
NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)						
Number Percent	154 21.1	127 19.8	112 21.0	139 20.1	87 19.8	1 7.2
NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS						
Number Percent	11 1.5	16 2.5	11 2.1	14 2.0	10 2.2	0 ---
OTHER						
Number Percent	5 0.7	4 0.6	4 0.7	4 0.6	5 1.1	0 ---
NUMBER ANSWERING	731 (100%)	611 (100%)	534 (100%)	693 (100%)	444 (100%)	14 (100%)

Table XXIII summarizes the answers given to Division C of Question V.

Table XXIII (a)

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY
Engravings, Electros, etc.

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>FIXED PERCENTAGE ON GROSS COST</u>								
Number	123	43	43	15	29	9	6	246
Percent	35.3	31.8	40.3	23.1	29.1	25.7	37.5	33.6
<u>FIXED PERCENTAGE ON NET COST</u>								
Number	110	59	37	29	13	15	6	269
Percent	31.5	43.8	34.7	44.7	54.3	43.0	37.5	36.8
<u>VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	---	---	---	---	2	0	0	2
Percent	---	---	---	---	8.3	---	---	0.3
<u>VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	1	0	0	1	0	0	0	2
Percent	0.3	---	---	1.5	---	---	---	0.3
<u>FEE BASIS (having no relation to amount or quantity)</u>								
Number	27	6	3	4	0	0	2	42
Percent	7.7	4.4	2.8	6.1	---	---	12.5	5.7
<u>NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)</u>								
Number	81	21	22	15	2	11	2	154
Percent	23.2	15.5	20.3	23.1	8.3	31.3	12.5	21.1
<u>NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS</u>								
Number	3	5	2	1	0	0	0	11
Percent	0.9	3.7	1.9	1.5	---	---	---	1.5
<u>OTHER</u>								
Number	4	1	0	0	0	0	0	5
Percent	1.1	0.7	---	---	---	---	---	0.7
<u>NUMBER ANSWERING</u>	349	135	107	65	24	35	16	731
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

These tables represent the answers to Division C of Question V, broken down according to the size of appropriation.

Table XXIII (b)

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY
Typography

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>FIXED PERCENTAGE ON GROSS COST</u>								
Number	104	40	37	15	7	6	3	212
Percent	35.9	32.0	37.8	24.6	30.4	18.7	25.0	33.1
<u>FIXED PERCENTAGE ON NET COST</u>								
Number	95	54	34	25	12	13	6	239
Percent	32.8	43.2	34.7	41.0	52.2	40.7	50.0	37.3
<u>VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	---	---	---	---	2	0	0	2
Percent	---	---	---	---	8.7	---	---	0.3
<u>VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	1	0	0	1	0	0	0	2
Percent	0.3	---	---	1.6	---	---	---	0.3
<u>FEE BASIS (having no relation to amount or quantity)</u>								
Number	23	7	4	3	0	2	0	39
Percent	7.9	5.6	4.1	4.3	---	6.2	---	6.1
<u>NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)</u>								
Number	60	16	21	15	2	11	2	127
Percent	20.7	12.8	21.4	24.6	8.7	34.4	16.7	19.8
<u>NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS</u>								
Number	4	7	2	2	0	0	1	16
Percent	1.4	5.6	2.0	3.3	---	---	8.3	2.5
<u>OTHER</u>								
Number	3	1	0	0	0	0	0	4
Percent	1.0	0.8	---	---	---	---	---	0.6
<u>NUMBER ANSWERING</u>	290	125	98	61	23	32	12	641
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXIII (a), page 198.

Table XXIII (c)

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY

Mats												
		Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undesignated	Total			
FIXED PERCENTAGE ON GROSS COST												
Number		81	33	31	11	7	6	2	171			
Percent		34.5	32.0	40.3	19.6	31.8	20.0	18.2	32.0			
FIXED PERCENTAGE ON NET COST												
Number		77	43	27	25	11	14	5	202			
Percent		32.7	41.7	35.1	44.5	50.0	46.7	45.4	37.8			
VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS												
Number		0	0	0	0	2	0	0	2			
Percent		---	---	---	---	9.1	---	---	0.4			
VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS												
Number		1	0	0	1	0	0	0	2			
Percent		0.4	---	---	1.9	---	---	---	0.4			
FEE BASIS (having no relation to amount or quantity)												
Number		17	4	3	4	0	1	1	30			
Percent		7.2	3.9	3.9	7.1	---	3.3	9.1	5.6			
NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)												
Number		51	18	16	14	2	9	2	112			
Percent		21.7	17.5	20.7	25.0	9.1	30.0	18.2	21.0			
NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS												
Number		5	4	0	1	0	0	1	11			
Percent		2.2	3.9	---	1.9	---	---	9.1	2.1			
OTHER												
Number		3	1	0	0	0	0	0	4			
Percent		1.3	1.0	---	---	---	---	---	0.7			
NUMBER ANSWERING												
Number		235	103	77	56	22	30	11	534			
Percent		(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)			

See note on Table XXIII (a), page 198.

Table XXIII (d)

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY

Art Work, Photographs, etc.

		Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>FIXED PERCENTAGE ON GROSS COST</u>									
Number		114	144	39	16	9	7	4	233
Percent		35.3	33.6	38.3	25.0	36.0	21.2	26.7	33.6
<u>FIXED PERCENTAGE ON NET COST</u>									
Number		100	51	35	26	12	14	6	244
Percent		31.0	38.8	35.3	40.6	48.0	42.5	40.0	35.2
<u>VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>									
Number		0	0	0	0	2	0	0	2
Percent		---	---	---	---	8.0	---	---	0.3
<u>VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>									
Number		2	0	0	1	0	0	0	3
Percent		0.6	---	---	1.6	---	---	---	0.4
<u>FEE BASIS (having no relation to amount or quantity)</u>									
Number		32	10	4	4	0	2	2	54
Percent		9.9	7.7	3.9	6.2	---	6.1	13.3	7.8
<u>NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)</u>									
Number		67	22	20	16	2	10	2	139
Percent		20.8	16.8	19.6	25.0	8.0	30.2	13.3	20.1
<u>NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS</u>									
Number		5	3	4	1	0	0	1	14
Percent		1.5	2.3	3.9	1.6	---	---	6.7	2.0
<u>OTHER</u>									
Number		3	1	0	0	0	0	0	4
Percent		0.9	0.8	---	---	---	---	---	0.6
<u>NUMBER ANSWERING</u>									
Number		323	131	102	64	25	33	15	693
Percent		(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXIII (a), page 198.

Table XXIII (e)

METHODS OF AGENCY COMPENSATION FOR MATERIALS PURCHASED BY AGENCY

Printing (Other than Direct Mail)

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>FIXED PERCENTAGE ON GROSS COST</u>								
Number	70	27	27	9	5	6	1	145
Percent	33.7	34.2	41.5	21.9	31.2	24.0	10.0	32.6
<u>FIXED PERCENTAGE ON NET COST</u>								
Number	60	29	23	18	8	7	6	151
Percent	28.8	36.7	35.4	44.0	50.0	28.0	60.0	34.0
<u>VARIABLE PERCENTAGE ON GROSS DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	0	0	0	0	2	0	0	2
Percent	---	---	---	---	12.5	---	---	0.5
<u>VARIABLE PERCENTAGE ON NET DEPENDING UPON VOLUME OF ADVERTISING IN DISCOUNT MEDIUMS</u>								
Number	1	0	0	1	0	0	0	2
Percent	0.5	---	---	2.4	---	---	---	0.5
<u>FEE BASIS (having no relation to amount or quantity)</u>								
Number	22	8	4	4	0	3	1	42
Percent	10.6	10.1	6.2	9.8	---	12.0	10.0	9.5
<u>NO AGENCY SERVICE CHARGE WHATSOEVER (materials billed at cost to advertiser)</u>								
Number	46	11	11	7	1	9	2	87
Percent	12.1	13.9	16.9	17.0	6.3	36.0	20.0	19.6
<u>NO AGENCY SERVICE CHARGE WHATSOEVER AND NO CHARGE FOR MATERIALS</u>								
Number	5	3	0	2	0	0	0	10
Percent	2.4	3.8	---	4.9	---	---	---	2.2
<u>OTHER</u>								
Number	4	1	0	0	0	0	0	5
Percent	1.9	1.3	---	---	---	---	---	1.1
<u>NUMBER ANSWERING</u>	208	79	65	41	16	25	10	444
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

See note on Table XXIII (a), page 198.

Table XXIV (a)

METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES

Consumer Investigations

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>AT COST TO AGENCY</u>								
Number	25	19	23	31	9	10	3	120
Percent	23.5	26.0	42.6	66.0	34.6	38.4	37.5	35.2
<u>COST PLUS FIXED PERCENTAGE</u>								
Number	20	14	6	4	4	1	1	50
Percent	18.7	19.2	11.1	8.5	15.4	3.8	12.5	14.6
<u>BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT</u>								
Number	0	1	0	0	0	0	0	1
Percent	---	1.4	---	---	---	---	---	0.3
<u>A PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT</u>								
Number	0	1	0	1	0	0	0	2
Percent	---	1.4	---	2.1	---	---	---	0.6
<u>FEE BASIS</u>								
Number	31	18	10	3	4	2	4	72
Percent	29.0	24.7	18.5	6.4	15.4	7.7	50.0	21.1
<u>NO CHARGE</u>								
Number	31	20	15	8	9	12	0	95
Percent	29.0	27.5	27.8	17.0	34.6	46.5	---	27.9
<u>OTHER</u>								
Number	0	0	0	0	0	1	0	1
Percent	---	---	---	---	---	3.8	---	0.3
<u>NUMBER ANSWERING</u>	107	73	54	47	26	26	8	341
	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)	(100%)

These tables represent the information given in answers to Division D of Question V.

Table XXIV (b)
METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES
Dealer Investigations

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
AT COST TO AGENCY Number Percent	26 26.3	14 23.3	23 45.2	33 71.8	7 36.8	9 37.5	2 25.0	114 37.2
COST PLUS FIXED PERCENTAGE Number Percent	18 18.2	8 13.3	4 7.8	3 6.3	2 10.5	1 4.2	1 12.5	37 12.1
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
A PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	1 1.7	0 ---	0 ---	0 ---	0 ---	0 ---	1 0.3
FEE BASIS Number Percent	24 24.2	17 28.4	9 17.6	3 6.3	4 21.1	2 8.3	4 50.0	63 20.5
NO CHARGE Number Percent	29 29.3	19 31.6	14 27.5	7 15.2	6 31.6	11 45.8	1 12.5	87 28.3
OTHER Number Percent	2 2.0	1 1.7	1 1.9	0 ---	0 ---	1 4.2	0 ---	5 1.6
NUMBER ANSWERING	99 (100%)	60 (100%)	51 (100%)	46 (100%)	19 (100%)	24 (100%)	8 (100%)	307 (100%)

See note on Table XXIV (a), page 203.

Table XXIV (c)
METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES
Other Research Work

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
AT COST TO AGENCY Number Percent	22 24.7	12 19.5	20 50.0	29 69.0	4 26.7	7 38.9	2 33.3	96 35.3
COST PLUS FIXED PERCENTAGE Number Percent	14 15.7	11 17.7	4 10.0	4 9.5	3 20.0	1 5.5	1 16.7	38 14.0
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	0 ---	1 1.6	0 ---	0 ---	0 ---	0 ---	0 ---	1 0.4
A PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	1 1.6	0 ---	0 ---	0 ---	0 ---	0 ---	1 0.4
FEE BASIS Number Percent	30 33.7	18 29.0	5 12.5	2 4.8	3 20.0	2 11.1	3 50.0	63 23.1
NO CHARGE Number Percent	21 23.6	18 29.0	11 27.5	7 16.7	5 33.3	8 44.5	0 ---	70 25.7
OTHER METHOD Number Percent	2 2.3	1 1.6	0 ---	0 ---	0 ---	0 ---	0 ---	3 1.1
NUMBER ANSWERING	89 (100%)	62 (100%)	40 (100%)	42 (100%)	15 (100%)	18 (100%)	6 (100%)	272 (100%)

See note on Table XXIV (a), page 203.

Table XXIV (d)
METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES

Publicity Service									
	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total	
AT COST TO AGENCY Number Percent	21 18.1	16 22.6	17 37.7	21 58.3	4 26.7	4 19.0	2 33.3	85 27.4	
COST PLUS FIXED PERCENTAGE Number Percent	16 13.7	13 18.3	3 6.7	4 11.1	2 13.3	4 19.0	1 16.7	43 13.9	
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	
A. PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	
FEE BASIS Number Percent	31 26.8	20 28.2	9 20.0	2 5.6	5 33.3	7 33.4	1 16.7	75 24.2	
NO CHARGE Number Percent	46 39.6	21 29.5	16 35.6	9 25.0	4 26.7	5 23.8	2 33.3	103 33.2	
OTHER METHOD Number Percent	2 1.7	1 1.4	0 ---	0 ---	0 ---	1 4.8	0 ---	4 1.3	
NUMBER ANSWERING Number Percent	116 (100%)	71 (100%)	45 (100%)	36 (100%)	15 (100%)	21 (100%)	6 (100%)	310 (100%)	

See note on Table XXIV (a), page 203.

Table XXIV (e)
METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES

Radio Talent									
	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total	
AT COST TO AGENCY Number Percent	10 45.4	7 28.0	11 39.3	14 48.4	2 11.7	3 16.7	2 66.7	49 34.5	
COST PLUS FIXED PERCENTAGE Number Percent	6 27.3	11 44.0	13 46.4	11 38.0	15 88.3	8 44.4	1 33.3	65 45.8	
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	2 9.1	1 4.0	0 ---	1 3.4	0 ---	0 ---	0 ---	4 2.8	
A. PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	2 8.0	0 ---	1 3.4	0 ---	0 ---	0 ---	3 2.1	
FEE BASIS Number Percent	1 4.5	0 ---	3 10.7	1 3.4	0 ---	2 11.1	0 ---	7 4.9	
NO CHARGE Number Percent	3 13.7	4 16.0	1 3.6	1 3.4	0 ---	5 27.8	0 ---	14 9.9	
OTHER METHOD Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	
NUMBER ANSWERING Number Percent	22 (100%)	25 (100%)	28 (100%)	29 (100%)	17 (100%)	18 (100%)	3 (100%)	142 (100%)	

See note on Table XXIV (a), page 203.

Table XXIV (f)

METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES
Training and Supervising Salesmen

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
AT COST TO AGENCY Number Percent	25.0. 3	16.7 2	50.0 3	100 4	0 ---	0 ---	1 100	13 32.5
COST PLUS FIXED PERCENTAGE Number Percent	25.0 3	16.7 2	0 ---	0 ---	0 ---	25.0 1	0 ---	6 15.0
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
A PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
FEE BASIS Number Percent	16.7 2	25.0 3	0 ---	0 ---	0 ---	1 25.0	0 ---	6 15.0
NO CHARGE Number Percent	33.3 4	41.6 5	50.0 3	0 ---	100 1	50.0 2	0 ---	15 37.5
OTHER METHOD Number Percent	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---	0 ---
NUMBER ANSWERING	12 (100%)	12 (100%)	6 (100%)	4 (100%)	1 (100%)	4 (100%)	1 (100%)	40 (100%)

See note on Table XXIV (a), page 203.

Table XXIV (g)

METHODS OF AGENCY COMPENSATION
for
SPECIAL SERVICES RENDERED BY AGENCIES
Sales and Service Literature for Salesmen and Dealers

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
AT COST TO AGENCY Number Percent	8 10.8	17.0 7	15.1 5	34.6 2	16.7 2	6.2 1	1 16.7	33 15.9
COST PLUS FIXED PERCENTAGE Number Percent	25 33.8	13 31.8	10 30.3	16 61.6	9 75.0	25.0 4	1 16.7	78 37.5
BILLED TO ADVERTISER AT A PRICE HIGHER THAN AGENT'S CONTRACT PRICE - DIFFERENCE BEING AGENT'S PROFIT Number Percent	0 ---	0 ---	1 3.1	0 ---	0 ---	0 ---	0 ---	1 0.5
A PERCENTAGE ON TOTAL OF COST TO AGENT AND AGENT'S RESALE PROFIT Number Percent	0 ---	0 ---	1 3.1	0 ---	0 ---	0 ---	0 ---	1 0.5
FEE BASIS Number Percent	28 37.8	8 19.5	5 15.1	1 3.8	1 8.3	5 31.3	4 66.6	52 25.0
NO CHARGE Number Percent	11 14.9	12 29.3	11 33.3	0 ---	0 ---	5 31.3	0 ---	39 18.7
OTHER METHOD Number Percent	2 2.7	1 2.4	0 ---	0 ---	0 ---	1 6.2	0 ---	4 1.9
NUMBER ANSWERING	74 (100%)	41 (100%)	33 (100%)	26 (100%)	12 (100%)	16 (100%)	6 (100%)	208 (100%)

See note on Table XXIV (a), page 203.

Table XXV

SOLICITATION BY MEDIUM SALESMEN

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>INCREASING</u>								
Number	145	55	36	23	14	11	3	287
Percent	31.8	35.3	31.6	35.4	56.0	37.9	16.7	33.3
<u>DECREASING</u>								
Number	211	66	47	17	6	5	7	359
Percent	46.3	42.3	41.2	26.2	24.0	17.2	38.9	41.6
<u>NO CHANGE</u>								
Number	100	35	31	25	5	13	8	217
Percent	21.9	22.4	27.2	38.4	20.0	44.9	44.4	25.1
<u>NUMBER ANSWERING</u>	456 (100%)	156 (100%)	114 (100%)	65 (100%)	25 (100%)	29 (100%)	18 (100%)	863 (100%)

The information given in this table is taken from the answers given to Question IX.

Table XXVI

AGENCY SOLICITATION BASED ON SPECULATIVE COPY

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>INCREASING</u>								
Number	96	31	28	23	5	11	4	198
Percent	22.0	21.0	25.2	36.5	20.0	35.5	33.3	23.9
<u>DECREASING</u>								
Number	158	56	45	19	6	9	5	298
Percent	36.2	37.8	40.6	30.2	24.0	29.0	41.7	36.0
<u>NO CHANGE</u>								
Number	183	61	38	21	14	11	3	331
Percent	41.8	41.2	34.2	33.3	56.0	35.5	25.0	40.1
<u>NUMBER ANSWERING</u>	437 (100%)	148 (100%)	111 (100%)	63 (100%)	25 (100%)	31 (100%)	12 (100%)	827 (100%)

This tabulation shows the answers to Question X (b).

Table XXVII

ATTITUDE OF ADVERTISERS TOWARD THE DISCOUNT SYSTEM

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>FAVORABLE</u>								
Number	291	88	52	30	11	13	8	493
Percent	65.9	60.2	48.7	50.8	46.0	48.2	57.2	60.1
<u>UNFAVORABLE</u>								
Number	142	54	53	29	13	14	6	311
Percent	32.1	37.0	48.8	49.2	54.0	51.8	42.8	37.9
<u>FAVORABLE WITH RESTRICTIONS</u>								
Number	3	2	1	0	0	0	0	6
Percent	0.7	1.4	0.9	---	---	---	---	0.7
<u>DOUBTFUL</u>								
Number	6	2	3	0	0	0	0	11
Percent	1.3	1.4	2.7	---	---	---	---	1.3
<u>NUMBER ANSWERING</u>	442 (100%)	146 (100%)	109 (100%)	59 (100%)	24 (100%)	27 (100%)	14 (100%)	821 (100%)

The information in this compilation represents the answers to Question XVI. Approximately 40 per cent of the advertisers answering Question XVI indicated that they were unfavorable to the discount system. However, from the preceding table, it is evident that approximately 60 per cent of the advertisers answering Question XVIII would prefer another basis of compensation if they were able to make an unhampered choice.

Table XXVIII

BELIEFS REGARDING LEGAL OR MORAL RESTRICTIONS WHICH REQUIRE ADVERTISERS TO COMPENSATE AGENCIES BY DISCOUNT OR "COMMISSION" ARRANGEMENT

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$249,999	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and Over	Undes- ignated	Total
<u>(A) LEGAL - YES</u>								
Number	41	19	11	3	2	1	3	80
Percent	15.0	16.8	16.1	6.6	11.7	4.5	42.8	14.7
<u>LEGAL - NO</u>								
Number	231	94	57	42	15	21	4	464
Percent	85.0	83.2	83.9	93.4	88.3	95.5	57.2	85.3
<u>NUMBER ANSWERING</u> (Legal)	272 (100%)	113 (100%)	68 (100%)	45 (100%)	17 (100%)	22 (100%)	7 (100%)	544 (100%)
<u>(B) MORAL - YES</u>								
Number	150	36	31	15	6	6	2	246
Percent	41.8	29.5	35.6	28.8	30.0	26.1	50.0	36.9
<u>MORAL - NO</u>								
Number	209	86	56	37	14	17	2	421
Percent	58.2	70.5	64.4	71.2	70.0	73.9	50.0	63.1
<u>NUMBER ANSWERING</u> (Moral)	359 (100%)	122 (100%)	87 (100%)	52 (100%)	20 (100%)	23 (100%)	4 (100%)	667 (100%)

This table shows the answers given to Question XVII.

Table XXIX

METHODS OF AGENCY COMPENSATION PREFERRED BY ADVERTISERS

	Under \$50,000	\$50,000 to \$99,999	\$100,000 to \$250,000	\$250,000 to \$499,999	\$500,000 to \$999,999	\$1,000,000 and over	Undes- ignated	Total
<u>STRAIGHT FEE</u>								
	155 42.6	59 46.4	47 49.4	28 56.0	11 52.3	14 50.0	3 33.3	317 45.7
<u>FEE WITH ALLOWANCE FOR EXTRA WORK</u>								
	3 0.8	1 0.8	2 2.1	0 ---	1 4.8	2 7.2	0 ---	9 1.3
<u>SLIDING COMMISSION</u>								
	6 1.6	3 2.4	1 1.1	3 6.0	2 9.5	3 10.7	0 ---	18 2.6
<u>COMMISSION PLUS FEE</u>								
	20 5.5	8 6.3	3 3.2	0 ---	0 ---	1 3.6	0 ---	32 4.6
<u>COMMISSION</u>								
	138 37.9	44 34.6	33 34.6	16 32.0	3 14.3	6 21.3	5 55.6	245 35.4
<u>SPECULATIVE BASIS</u>								
	18 4.9	6 4.7	6 6.3	1 2.0	2 9.5	1 3.6	1 11.1	35 5.0
<u>PERCENTAGE ON NET COST</u>								
	10 2.8	4 3.2	1 1.1	1 2.0	1 4.8	0 ---	0 ---	17 2.4
<u>COMMISSION PLUS SPECULATIVE</u>								
	2 0.5	1 0.8	0 ---	0 ---	0 ---	0 ---	0 ---	3 0.4
<u>FEE PLUS SPECULATIVE</u>								
	7 2.0	0 ---	0 ---	1 2.0	1 4.8	0 ---	0 ---	9 1.3
<u>COMMISSION VARYING WITH TYPE OF MEDIA</u>								
	1 0.3	0 ---	1 1.1	0 ---	0 ---	0 ---	0 ---	2 0.3
<u>FEE PLUS SLIDING COMMISSION</u>								
	1 0.3	0 ---	1 1.1	0 ---	0 ---	1 3.6	0 ---	3 0.4
<u>MISCELLANEOUS</u>								
	3 0.8	1 0.8	0 ---	0 ---	0 ---	0 ---	0 ---	4 0.6
<u>NUMBER ANSWERING</u>								
	364 (100%)	127 (100%)	95 (100%)	50 (100%)	21 (100%)	28 (100%)	9 (100%)	694 (100%)

This is a tabulation of the answers to Question XVIII.

* * * * *

NOTE: Tabulations of Questions VIII, XI, XII, XIII, and XX supplied too little information to justify their reproduction but the following comments are in order on those tabulations:

Only 7 advertisers declared, in answer to Questions XI (a) and XI (b), that they owned the advertising agency handling their account either in whole or in part. Of this number 2 indicated that ownership was held in the company's own name and 3 stated that it was held in the name of individual officers or employees as stockholders; the remaining 2 did not indicate how ownership was held.

In reply to Question XII, only 2 advertisers stated that their companies were owned in part by an agency. No advertiser admitted, in answering Question XIII, that the salary of any person in their organization was paid by an agency. It may be significant that a number of advertisers didn't answer "Yes" or "No" to one or more of the last three questions commented on above. 17 advertisers left Question XI blank, 25 didn't answer Question XII, and 23 left Question XIII blank.

It was not possible to create a usable table on information secured from answers given to Question VIII, which read:

"(a) How many years have you advertised the product or service covered in this Checking List?

"(b) How many times have you changed agencies during that period?

"(c) How long have you had your present agency?

"(d) If you have changed agencies, can you give any definite reasons for any or all of your changes?"

It was also impossible to create a tabulation of information called for in Question XX, which read:

"Please make any comments you care to on the subject of advertising agency compensation."

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